UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/NGO/68
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0020104 88*

ENG

Reunion of Kashmiri families

1. Article 10(1) of International Covenant on Economic, Social and Cultural Rights (ICESCR) states that the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society. Yet since the 1947 division of Kashmir, families living on either side of the border have been denied the right to reunite.

2. The Line of Control (LOC) established between Indian and Pakistani occupied Kashmir denies Kashmiris the right to freedom of movement, in contravention of article 12(1) of the International Covenant on Civil and Political Rights. The LOC has separated mothers from their children and sisters from their brothers. For many divided families there is a distance of only a few miles between them, but the foreign forces of occupation have not allowed them to meet with their loved ones for the last 54 years. Those able to get permission to cross must travel a circuitous route—sometimes thousands of miles—to cover the distance between them of only a few miles

3. Why are Kashmiris not allowed to travel freely across their land? According to UN resolutions, Kashmir is a disputed territory the future of which must be decided through a fair plebiscite. However the right of families to live together is a humanitarian issue that transcends regional conflict and demands an international response.

4. The Asian Legal Resource Centre calls upon the Commission to initiate all possible efforts for the Kashmiri people to exercise their basic right to freedom of movement. The LOC must be opened to allow divided families to meet each other and permit free movement of Kashmiris across the territory as they wish, irrespective of social and political conditions.

5. The Asian Legal Resource Centre also calls upon the Commission to recognize the right of the Kashmiri people to self-determination—which is the root issue—in accordance with the UN Charter. The Asian Legal Resource Centre draws the attention of the Commission to the resolution of the United Nations Commission for India and Pakistan of 5 January 1949, which denied the Kashmiri people the right to remain an independent nation. This resolution both contravenes the UN Charter and also the internationally recognized definition of self-determination contained in article 1(1) of the ICESCR. Accordingly, the Kashmiri people must be given the right to self-determination in keeping with internationally accepted principles.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/69
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201049O*
ENG

Right of abode in Hong Kong SAR

1. Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states in article 10(1) that "the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society".

2. Hong Kong Special Administrative Region of the People's Republic of China is bound by the provisions of the ICESCR, as the United Kingdom—upon ratifying the covenant in 1976—applied it to its colonial territory of Hong Kong the same year. Although Hong Kong was returned to the sovereignty of the People's Republic of China in 1997, the Government of China, in its letter of notification of treaties deposited with the UN Secretary-General, stated that the ICESCR would continue to be observed in Hong Kong SAR. Moreover, this declaration is codified in article 39 of the Basic Law, the mini-Constitution of Hong Kong SAR.

3. On January 29, 1999, the Court of Final Appeal (CFA), the highest court in the Hong Kong SAR, ruled that all Chinese citizens who are children of the SAR's permanent residents born outside of Hong Kong SAR have the right of abode in Hong Kong SAR, irrespective of whether their parents had become permanent residents at the time of their birth or not. At the request of the Government of Hong Kong SAR, however, the Standing Committee of the National People's Congress (NPC) in Beijing reinterpreted articles 22(4) and 24(2)(3) of the Basic Law on June 26, 1999, and in effect overturned the CFA's decision of January 29, denying retrospectively the right of abode in Hong Kong SAR to thousands of people from mainland China. In its ruling, the NPC Standing Committee said that those born before one of their parents became a permanent resident of Hong Kong SAR did not have right of abode there. For those who qualify, the mechanism for gaining right of abode in the SAR—the Standing Committee of the NPC said—is to get a one-way permit from mainland authorities before resettling.

4. After the announcement of the NPC Standing Committee, however, the chief executive of the Hong Kong SAR said that those people from the mainland who had arrived in Hong Kong between 1 July 1997 and 29 January 1999 and who had made a claim could remain in the Hong Kong SAR and would be granted right of abode, although the authorities generally had refused to accept any.

5. After the Hong Kong SAR government made this concession, 5114 individuals filed a new claim to right of abode. This group claimed that they had followed the advice of the chief executive and other government officials made in public statements and/or in reply to written requests to the government's Legal Aid Department not to file legal cases for right of abode until the CFA ruling of 29 January 1999. Thus, when the chief executive of the Hong Kong SAR issued the government's concessionary policy, they felt that they had been misled and had a legitimate expectation through both oral and written statements that their status would be determined after the CFA ruling of 29 January 1999. On 10 January 2002 the CFA found that the claimants had no right of abode, except for about 400 claimants who had letters from the Legal Aid Department asking them to refrain from legal action.

6. The above decisions have resulted in many personal tragedies. Li Xiru, aged 72, lost his claim for right of abode and so will be unable to care for his 95 year-old ailing father. Fang Chu-jun, a 20 year-old girl with physical and mental disabilities denied right of abode will have to return to the mainland. The oldest son of the Lam family, Lam Kam-ming, aged 20, will be forced to return to the mainland while their 6 year-

old daughter is allowed to stay.

7. In May 2001 the Committee on Economic, Social and Cultural Rights made the following observations regarding Hong Kong SAR (E/C.12/1/Add.58):

C. Factors and difficulties impeding the implementation of the Covenant

. . .

(12) The Committee notes that issues regarding the right of abode in relation to permanent residence and split families impede the enjoyment of economic, social and cultural rights by the families affected by the reinterpretation on 26 June 1999 by the National People's Congress Standing Committee of article 24 of the Basic Law.

. . .

(40) When formulating and implementing its policies on permanent residence and split families, HKSAR is urged to give the most careful attention to all the human rights dimensions of the issue, including articles 2 (2), 3 and 10 of the Covenant. The Committee reminds HKSAR that any limitations in connection with article 10 must be justified in relation to each element set out in article 4. The Committee urges HKSAR to reconsider extending the "concession" made by HKSAR following the reinterpretation of 26 June 1999.

(41) HKSAR is urged to enhance the transparency of all relevant processes concerning permanent residence and split families. For example, the Committee recommends that all data, appropriately disaggregated (e.g. by origin of applicant), are made publicly available and tabled in the Legislative Council every six months.

8. Denying members of these families the right to live together in the same homes and communities erodes the cohesion and care provided by the family and breaches the Hong Kong SAR government's obligation to protect and assist the family as mandated in article 10(1) of the ICESCR. For these reasons the Asian Legal Resource Centre calls upon the Government of Hong Kong SAR to urgently consider granting right of abode to all of those who lost their court case and allow them to remain in Hong Kong with their families on humanitarian grounds. For those who have not filed a court case and may be living in mainland China, the Asian Legal Resource Centre asks the Government of Hong Kong SAR to work to reunite them with their families as soon as possible.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/70
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 4 9 2 *

ENG

Mandatory detention and denial of the right to seek asylum in Australia

1. The Government of Australia has systematically breached its humanitarian obligations towards asylum seekers through a regime of mandatory detention and new legislation explicitly designed to deny the right to seek asylum and limit the rights of refugees.

2. The right to seek and enjoy asylum is guaranteed by a range of international instruments to which Australia is a party, including the Universal Declaration of Human Rights (article 14), the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, the Convention Relating to the Status of Refugees (articles 26 and 31), the International Covenant on Civil and Political Rights (articles 9 and 16) and the International Convention on the Elimination of All Forms of Racial Discrimination (article 5). Australia's twin policies of mandatory detention and denial of the right to seek asylum effectively breach all of the obligations assigned by the above instruments.

3. Australia introduced its policy of mandatory detention of asylum seekers in 1992, under which, "All unlawful non-citizens in Australia must be detained and, unless they are granted permission to remain in the country (through the grant of a visa), they must be removed as soon as practicable" (Parliamentary Current Issues Brief, 8 2000–01). With the increased number of arrivals since 1999, the policy has resulted in a detention centre crisis. Currently there are six immigration detention centres in Australia, managed by a private company on contract from the Department of Immigration. By all independent accounts the conditions in these centres are far worse than conditions in Australian jails.

4. On 11 May 2001 the detention centre crisis received international attention after an incident at the Port Hedland centre resulted in 21 detainees being arrested and charged with criminal offences. The authorities soon released edited videotape footage to back up their allegations of a riot. Over a hundred asylum seekers then went on a hunger strike and on May 29 a statement signed by 150 detainees was smuggled out of the centre, asserting that the video footage was one-sided, and that the authorities had concealed taped evidence of their maltreatment.

5. An Australian Joint Parliamentary Team subsequently visited all detention centres and concluded that the conditions were 'appalling and unacceptable'. The Team observed massive over-population of facilities, inadequate amenities and services, and resultant mental illnesses. The Team heard stories of detainees' self-mutilation, prescription drug overdoses, attempted suicides and constant subjection to physical and psychological abuse by centre staff. The Team proposed that mandatory detention be restricted to fourteen weeks, in keeping with recommendations by the Working Group on Arbitrary Detention on limiting detention periods [E/CN.4/1998/44, paragraph 33(b); E/CN.4/2000/4, annex II, deliberation no. 5]. Notwithstanding, both the Australian Prime Minister and Minister for Immigration refused to even consider the Team's findings.

6. The Ministers' outright rejection of this balanced and thorough report by their peers characterises their utter contempt for the human rights of asylum seekers and their concomitant willingness to subject new arrivals to brutal and indecent conditions. The Australian Government has tolerated no opposition to its inhumane policies and has readily intimidated anyone prepared to question its assumed mandate: on June 8, for instance, a Western Australian magistrate questioned why two teenage boys brought before him on charges arising from the Port Hedland incident should have been in detention at all, as it appeared to him a violation of Australia's obligations under the Convention on the Rights of the Child; he was immediately censured by the Attorney General and warned that it was not within his mandate to comment on international law. Unsurprisingly, the

Government has been equally unwilling to see through a 1999 agreement in principle that the Working Group on Arbitrary Detention might visit the centres. A planned May 2000 mission was postponed indefinitely after the Government informed the Group that the date 'was not convenient' [E/CN.4/2001/14, paragraph 60(c)].

7. The detention centre crisis has been characterised by deaths in custody, violence, mass escapes and hunger strikes. Heavily armed officers have regularly been stationed in the centres, and the Minister for Immigration has threatened the Australian public that anyone found aiding an escapee would be liable to criminal charges and a possible ten year sentence. This is a blighted and shameful litany of abuse and misconduct.

8. In late August 2001 attention turned from conditions in the detention centres themselves to new arrivals, when over 700 new asylum seekers—most from Afghanistan and Iraq—arrived at the Australian Indian Ocean territory of Christmas Island by boat from Indonesia. After the Norwegian merchant vessel Tampa rescued a further 438 asylum seekers from a boat in distress, the Government of Australia refused to permit disembarkation at Christmas Island and sent heavily armed troops to commandeer the ship. Facing justifiable criticism from the High Commissioner, global human rights organisations, churches and other governments, the Government brokered a deal for the temporary disembarkation of the asylum seekers at Nauru: the first step in what has since become know as the 'Pacific Solution', whereby all new intended arrivals to Australia are diverted to Pacific island states.

9. Recent arrivals have also been taken ashore at Christmas Island, however under new laws they are no longer entitled access to the Australian mainland by default of having reached that territory. The modified Border Protection Bill—a watered-down version of an earlier piece of draconian legislation the Government attempted to pass in late August 2001—was adopted on September 18 along with six other items. These bills are designed, in short, to keep out asylum seekers. Under them Christmas Island and nearby Ashmore Reef have been excised from Australia's migration zone. The legislative changes also allow 'reasonable force' to be used by Australian officers in removing boats from Australian waters, and deny any person—asylum seeker, Australian citizen or otherwise—the right to legal recourse. Other provisions have stripped the rights of asylum seekers who do reach Australia to have their cases heard and reviewed through independent judicial process, have narrowed the definition of 'persecution' under domestic law—such that it is now tighter than the standards set by the Convention Regarding the Status of Refugees—and have further limited the rights to permanent residency and equal status with other Australians of those people who are found to be refugees.

10. The Government of Australia is violating the right of asylum seekers to be treated fairly, equally and with dignity. By focussing public attention on the means by which asylum seekers are reaching Australia it has diverted attention from the plight of the asylum seekers themselves and denied their common humanity. By unashamedly demonising asylum seekers as potential terrorist cadres and security threats it has baselessly fostered a domestic climate of fear and xenophobia and further victimised innocent people. Government arguments about queues being jumped and ministerial terminological hairsplitting are also spurious and irrelevant. Australia is in breach of its humanitarian and international legal obligations.

11. The Asian Legal Resource Centre calls on the Commission to strongly urge the Government of Australia to alter its policies of mandatory detention and denial of the right to seek and enjoy asylum. The Asian Legal Resource Centre also demands that the Working Group on Arbitrary Detention be given immediate access to immigration detention centres in keeping with the agreement it reached in principle with the

Government of Australia in 1999. Additionally, the Commission must be alert to plans expressed by the Australian Minister for Foreign Affairs to manipulate the Commission's mandate through appointments of Australian citizens to positions of influence within its structure. Finally, given the growing global concern over movements of asylum seekers, the Asian Legal Resource Centre urges the appointment of a Special Rapporteur on the right to seek asylum to examine and pursue breaches of this right by governments around the world.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/NGO/71
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201049 4*

ENG

Torture in Sri Lanka

1. Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) determines that any act of torture or other cruel, inhuman or degrading treatment is an offence to human dignity to be condemned as a breach of the Charter of the United Nations and a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. Notwithstanding, the practice of torture in Sri Lanka is widespread and persistent. The Asian Legal Resource Centre has witnessed several recent cases of torture by police in Sri Lanka, as follows.

   At about 8pm on 6 October 2001 three police officers and some other men in uniform came to the house of Mr. Namal Fernando, 37, a full-time social worker and father of three children from Pitipana Duwa, Negombo. The police took Mr. Fernando away without reason, to Mundalama police station, about 70km away. At the station one police officer assaulted him with his hands and feet and then put him inside a cell. A Catholic priest, Gerard Jayawardene, came to the police station and inquired after the reason for Mr. Fernando's arrest. The assaulting police officer said that Mr. Fernando had threatened him by putting a pistol against his head. After that the Officer in Charge and four other officers took him to Wennupuwa and again assaulted him. There two police pressed him to the ground with their feet while another pointed a gun at him, saying that if the gun fired he would say he had shot because the prisoner had tried to escape. After they took him to another house and hit his chest and knees with a gun butt. Finally he was taken to the office of the Senior Police Superintendent at Chilaw and on 7 October back to Mundalama police station, where an officer took a statement from him and told him that he had been taken into custody regarding a robbery. Only at that stage was Mr. Fernando informed of the charges for the first time. At 8:30pm he was produced before a magistrate and remanded in custody, but he was released the next day without charge. It appears his arrest was due to mistaken identity.

   On 24 March 2001 Mr. Uchitha Thussara Kumara, 33 years old, married and the father of two children, was tortured to death at Ja-ela police station. Officers from there had arrested Mr. Kumara using a warrant for a minor offence. He was sent to the remand prison in Negambo on the evening of the same day. When his family made inquires about him on 26 March they learned that he had died and that the remand authorities had informed the Ja-ela police about the death, with an instruction to inform the family, which they had failed to do. The area magistrate visited the remand prison to see the body and made an order that it be sent for examination by the judicial medical officer of the Ragama Hospital. This examination has been completed and the sealed report sent to court. The family, on making inquiries, found that the medical officers' report states that the death was due to internal injuries. The family is of the view that the injuries were caused at the police station before the prisoner was handed over to remand custody.

   Mr. L. P. Maithreepala Senadira, a resident of Pansalgodella, Galamuna, was taken into custody at 3am on 7 January 2001 by the Polannaruwa tourist police on suspicion of selling illicit alcohol. The police had allegedly gone to the suspect's house and demanded liquor and when told that there was none the victim was blindfolded and taken to the police jeep. When the wife objected she was threatened with forceful removal by Sub-Inspector Manawadu of Polannaruwa and told to remain inside. The two brothers of Maithreepala Senadira were also taken into custody. At the Polonnaruwa police station, Maithreepala Senadira was tied to a pillar, his clothes removed, and he was beaten with a pipe and sticks by Sub-Inspector Manawadu. His sexual organs were severely injured and the bleeding was so serious he was taken to the Polonnaruwa hospital by the torturer himself, where his injuries required six stitches and his back and spine showed signs of

severe beatings. The officer had threatened his victim to keep the incident a secret. For this reason Mr. Senadira was transferred from Polonnaruwa hospital to Peradeniya hospital.

2. The Government of Sri Lanka ratified the CAT in January 1994 and passed it into domestic legislation in the same y ar, making torture punishable by imprisonment for a term not less than seven years. Despite the existence of this legislation, violations continue with impunity, while a handful of cases are reportedly pending in the courts. To date, the police officers having committed these crimes have not been arrested or brought before a court.

3. It is sad that the Sri Lankan police force has acquired a very low reputation at home and abroad. One of the reasons is the failure to prosecute these cases. The Asian Legal Resource Centre urges the Government of Sri Lanka to investigate all allegations of torture and effectively implement the CAT without delay. The Centre also urges the international community, through the Commission, to pursue the Government of Sri Lanka to this end.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/72
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0020104 96*

ENG

Torture: the central human rights abuse in Asia

1. According to article 7 of the International Covenant on Civil and Political Rights (ICCPR), no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Furthermore, article 16 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) determines that each State Party shall undertake to prevent—in any territory under its jurisdiction—acts of cruel, inhuman or degrading treatment or punishment when such acts are committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.

2. State-level torture also results in torture at other levels of society, such as domestic violence and sexual abuse. Sexual abuse, particularly rape, is one of the most heinous, brutal and dehumanising forms of torture. Yet the police, the military and the state—institutions charged with protecting society—are also far too often perpetrators of this form of torture, and these institutions thus re-victimise the victim. When the state and the elite keep the tradition of torture alive, it is difficult to create a tradition of dialogue and common understanding. To create the foundation for a democratic society, it is essential to eradicate torture.

3. In Asia, torture is still endemic, and a reality that affects all other rights. The freedom needed to develop an understanding of rights and the people's will to assert their rights are retarded by their consciousness of the widespread nature of torture. Torture is the reason vast masses of people in Asia are silent about the deep injustices they suffer. Torture is what keeps inequality alive. Some examples of torture's prevalence in Asia follow.

4. INDONESIA: During May 1998, the Indonesian military engineered a campaign of terror designed to prevent the toppling of the Suharto dictatorship. The main target of this campaign was the ethnic Chinese population. Besides the burning of buildings and people, the main mechanism of terror was the public gang rape of Chinese women. The psychological damage caused to the Chinese community has been immense, but has also been ignored. Despite the issue gaining a great deal of international attention and sympathy, the international community has failed to apply continuous pressure to ensure that the perpetrators are prosecuted and the victims properly compensated. Without this continuous pressure, the unreformed Indonesian prosecutions system will easily continue to ignore the rights of the victims to find justice, and similar strategies are likely to be used in future.

5. The June 2001 trial of 19 human rights defenders in Bandung, Central Java, also stands as an example of the common use of torture by the Indonesian police against activists there. An investigation by the Asian Human Rights Commission into cases of nine of the accused revealed that all had been brutally tortured and detained incommunicado for 5-7 days from their arrest on June 14. Even more disturbingly, the court—which is the only mechanism available for making complaints about torture by the police—has completely ignored subsequent complaints, and has supported the prosecuting police in every way imaginable. At this stage, there appears to be no chance of even a fair trial, let alone an investigation, prosecution and compensation for state torture.

6. INDIA: In many areas of India, beatings are not reported as torture or ill-treatment because they are so much a part of the arrest and detention process. This is particularly true in such areas as Jammu and Kashmir where detainees are routinely subjected to torture but rarely make complaints for fear of reprisals, and because they feel fortunate to be alive. In the broader society, upper caste men also use sexual abuse as a coercive mechanism to keep lower caste women, especially Dalit women, at the very bottom of society. In addition,

during communal riots, sexual abuse is a means by which the police take vengeance against a community; and when development programmes are implemented, sexual abuse is a way to subdue impoverished tribal people who protest against forcible eviction from their land.

7. BANGLADESH: In neighbouring Bangladesh many victims of rape can be tortured and raped again after their initial traumatic experience because they must remain in police custody for one or two days to undergo medical check-ups and other procedures. There the victims, particularly prostitutes, are exposed to threats by the police and may not be released from custody at all. In addition, existing laws—particularly the Public Security Act and Section 54 of the Special Powers Act—grant the authorities a licence to torture and make illegal arrests and detentions.

8. NEPAL: Problems of torture also exist in countries that have signed and ratified UN human rights conventions that should protect torture victims. Nepal, for instance, has ratified the ICCPR, and article 9(2) states that any section of an international act is as equally applicable as the municipal law. Article 14 of the Constitution of Nepal also guarantees that no one should be tortured. In addition to these legal protections, the 1996 Torture Compensation Act provides that anyone tortured in detention should be compensated. However, there is little effectiveness in the application of these laws, because ordinary courts do not have jurisdiction to punish the perpetrators; they can only recommend that the concerned department take action.

9. The Human Rights Commission Act has also opened a route to compensation for victims of torture or illegal detention, but again, the Human Rights Commission cannot directly compensate the victim and can only recommend that the concerned department or ministry take action against the alleged perpetrators. Since the promulgation of this act, there have been only a few torture cases where compensation has been awarded. Some cases have been before the courts for two or three years. In other cases, the courts have found that a medical examination of the victim was not done in time, and consequently, no case has been made. This is a major difficulty, for how can victims under the custody of the police make a medical examination that will incriminate the perpetrators who are holding them in custody? Moreover, the compensation, on those few occasions where is has been awarded, has been very low.

10. SRI LANKA: Similar problems exist in Sri Lanka, which ratified the CAT and enacted a domestic law for its implementation (Act No. 22 of 1994). Despite this, the courts have not successfully prosecuted any torturers under the Act, although the Supreme Court of Sri Lanka and the National Human Rights Commission declared after an inquiry that many people are guilty of committing torture. This lack of legal action against torturers can be explained (but not justified) by the conflicting nature of laws in Sri Lanka. While Sri Lanka's international obligations under the CAT and the domestic legal protections against torture in the 1994 Act protect its citizens, the *Prevention of Terrorism Act* (PTA) allows for arbitrary arrest, torture in detention and prolonged detention without trial. Confessions obtained under such detention are admissible in law, although it is commonly known that these confessions are made under duress. Due to prolonged detention, however, it is difficult to get medical proof to this effect.

11. About 240 victims of torture are brought monthly to Sri Lanka's public health institutions for treatment, according to the Bishop of Mannar. In a statement to Action de Chretiens pour l'Abolition de la Torture (ACAT), Bishop Rayappu Joseph said that careful studies revealed this statistic and made the following statement:

> Those not brought to these institutions, I am certain, would be several times this number [240 torture victims per month]. The types of torture resorted to by the

national armed forces and prison authorities on Tamil suspects and prisoners in remand are horrible and beyond description. Tamil youths are indiscriminately arrested on the slightest suspicion, kept for months and years without proper inquiry and are subjected to inhuman torture until they accept false accusations made against them. Thousands of Tamils are still languishing in detention centres and prisons.

The Bishop added that the great majority of victims of torture in Sri Lanka's war zones did not dare to reveal their experiences, even to judicial medical officers, after receiving death threats from the perpetrators.

12. The Human Rights Commission Act was introduced in 1996. Its provisions are adequate for the Commission to investigate violations of fundamental rights, including acts of torture. Any victim can invoke the Commission's jurisdiction in respect of violations or imminent violations. Unlike other statutes dealing with torture, the Human Rights Commission can, on its own, initiate inquiries into alleged violations of fundamental rights, including freedom from torture. However the Act does not provide an efficient procedure to grant relief to the victim.

13. CHINA: In China torture is also evident despite its ratification of the CAT. There, a combination of long-standing tolerance for the abuse of detainees and suspects, poor police training, inadequate funding of law enforcement and pressure to produce "evidence" to satisfy courts (who are no longer willing to convict on police statements) means police use of torture has reached epidemic levels. Chinese courts, however, routinely ignore defendants' claims that they have been tortured, even when they can show evidence of abuse in scars on their bodies. Torturers are very rarely prosecuted; and when they are, they are usually dealt with leniently. Certain kinds of torture outside the regular judicial process, such as torture in administrative detention and in non-custodial situations, are committed with complete impunity. China has yet to establish effective mechanisms to receive and investigate complaints of torture, and prosecute and punish perpetrators.

14. MYANMAR: In contrast to the above, Myanmar has not ratified any international covenants that would offer protection against torture, nor has it domestic laws to do likewise. Ample evidence collected by independent agencies working from outside the country indicates that the use of torture in Myanmar is particularly prevalent in military intelligence detention centres and prisons, and in areas of the country subjected to counter-insurgency operations. In the later case, rape and other forms of sexual abuse have been employed systemically as an act of war against populations in remote regions. Regards the former, to date the military government has extended limited cooperation only to the International Committee of the Red Cross for occasional visits to prisons and detention centres. Sadly, the Government of Myanmar remains largely oblivious to international attempts at scrutiny and reform.

15. From this brief overview of torture in the Asian region, it is clear that the implementation of the CAT requires the following state initiatives:
    - Torture must be treated as a criminal offence so that the CAT can be implemented by the prosecutor general (or equivalent), who should bear the legal responsibility for the prosecution of torture cases.
    - An independent investigation unit must be established and given the legal responsibility of investigating these types of crimes. These steps will not address the problem, however, unless those who are convicted of torture are sentenced properly.
    - The victims of this serious criminal act must be amply compensated, with the perpetrator/s paying part of the amount due.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/NGO/73
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (b) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201049 8*

ENG

A culture of impunity and the 1965-66 massacre in Indonesia

1. General Soeharto's 1965-66 pogrom of alleged communist sympathisers in Indonesia left an incalculable number of victims dead, jailed or otherwise persecuted. At least 500,000 and possibly as many as 2 million people were slaughtered. Hundreds of thousands more were arbitrarily imprisoned and tortured for up to 35 years without trial. Millions more had their lives ruined: the relatives of alleged communists had their identification cards marked and were economically, socially and politically ostracized under the Soeharto regime.

2. In the years following the Holocaust in Europe, the Jewish people managed to bring together international experts, lawyers, researchers and world leaders-as well as enormous amounts of money-in response to the genocide. Monuments were erected, statistics gathered, names of victims and perpetrators published, cases prepared, courts created and prosecutions pursued. This is how humans should react when sadistic dictators attempt to destroy an entire community. We must find out what happened. We must give justice to the victims. We must tell our grandchildren "never let this happen again". How vulnerable would the Jewish people feel today if these things had never happened?

3. The survivors of Soeharto's pogrom feel such vulnerability. Instead of memorial graveyards for the murdered thousands, mass graves cannot be dug because it is considered too politically sensitive. Instead of trials for crimes against humanity, the former dictator and his associates enjoy continued wealth, power and tacit global support for their mass murder. Instead of community vigilance to oppose anticommunist rhetoric, new violent anticommunist groups are emerging to shut down the few organisations brave enough to research the massacre. Instead of sites of extermination and public torture becoming permanent reminders that the world will never again accept such horror, there remain public museums glorifying those who killed the most alleged communists.

4. In spite of these conditions, aging, under-funded, physically threatened and socio-politically repressed former prisoners are slowly and methodically collecting data on the hundreds of thousands killed during those few months. These victims face an immense challenge to bring out the truth of what they survived, in an atmosphere of unrelenting danger.

5. The 1965-66 massacre took place following a so-called 'abortive coup', manipulated by General Soeharto to ensure him top military position, from which he could later overthrow President Sukarno. Before becoming president, Soeharto was already effectively running the country, however the Indonesian Communist Party (PKI) had a nationwide mass following that was a threat to his aspirations. Soeharto fabricated stories about the nature of PKI involvement in the 'coup' to justify the beginning of mass arrests and killings of communist organisers. Due to the enormous PKI support base, the army conscripted civilians. Islamic groups were the most prolific, activating murderous youth squads on the grounds that communists are atheist and hence could be killed by Muslims. Former President Wahid has admitted that his Muslim organisation - the largest in Indonesia - was involved in the killing of some half a million people. Christian groups also participated on similar ideological pretences. The army organised civilian militia to carry out killings, and encouraged landlords to execute peasant leaders calling for land reform. People accusing their neighbours of communist affiliation were rewarded with their victims' houses and property. Wives of those taken away were blackmailed into relationships with their husbands' persecutors. Passersby were coerced to assist the public torture of suspected communists. In short,

millions of civilians were actively involved in the killings and other human rights violations. The West was also complicit. The US Central Intelligence Agency is known to have provided the Indonesian army with vital military equipment as well as lists of the names of alleged communist leaders that were checked off as each person was killed, disappeared, or imprisoned.

6. It has so far been extremely difficult to uncover any of the dozens of mass graves containing the bodies of those not thrown into the ocean. However, in November 2000, Yayasan Penelitian Korban Pembunuhan 65/66 (YPKP) managed to get local government permission to unearth a mass grave near Wonosobo, Central Java, at the request of the victims' families. The Asian Legal Resource Centre attended this exhumation, which was coordinated by YPKP and Solidaritas Nusa-Bangsa (SNB), and involved one of Indonesia's top forensic experts. The unearthing revealed some 26 bodies buried in the forest, with bullet wounds evident in a number of skulls, identifying rings, clothing and teeth, and multiple projectiles. This grave contained persons imprisoned in Wonosobo in 1966 who had been taken to the site and shot. Wonosobo is just one of many mass graves throughout Indonesia, some of which are estimated to contain thousands of bodies in a single site.

7. Wonosobo was a major breakthrough for the survivors and victims' families, as their work there had official sanction. The exhumation was successful, and the families of those murdered and concealed without dignity for 34 years began preparing to give their fathers, husbands and grandparents a proper burial. However, this progress was violently halted in March 2001, when the families attempted to privately rebury their loved ones. The house where the family members had gathered for the occasion was surrounded and stormed by 'anticommunist' groups. The families tried quickly to take the remains to the new burial place, but were stopped and the coffins dragged out and broken open, scattering the bones across the road. Some of the organisers went into hiding, and the families have so far been unable to rebury their dead out of fear of further violence.

8. The 1965-66 massacre constitutes a Crime against Humanity that has been wilfully ignored by the international community, which prefers to pretend that Indonesia's 'emerging' democracy should not be upset by digging up the past. Yet it is pure fantasy to think it possible to build a culture of human rights on top of the bodies of those killed in one of single worst incidents of bloodshed in the twentieth century, all the while pretending that it never happened. It is the culture of impunity stemming from the 1965-66 massacre that is the core obstacle to achieving human rights in Indonesia. By failing to publicly address and resolve the outstanding issues caused by that event nothing is done to discourage the ongoing killing of people of other religions (as in Maluku and Central Sulawesi), other ethnicities (as in Kalimantan and Java during May 1998), or those seeking independence (as in Aceh and West Papua, and formerly East Timor). The current massacres are not only made possible by the legacy of 1965-66; they are made inevitable. As observed by former political prisoner of 20 years leading the campaign to uncover details of the 1965-66 massacre, Ibu Sulami:

> It is very easy for people who have not suffered a loss to say these matters should be left alone, but for the people who were involved and who suffered the loss of loved ones, they are continually having nightmares and are worrying about what happened. The killing of just one person is already a crime. So how much more terrible is it when more than one person is killed? The murder of hundreds of thousands of people must be talked about and accounted for. The resolution of this matter is like a struggle for civilisation, to

ensure that things like this will not recur in the future. The past is the past but these matters must be resolved for coming generations, for posterity.

9. To end the cycle of communal violence and impunity, there must be proper, well-resourced, free and independent investigations into the 1965-66 massacre followed by trials, sentences, apologies and compensation. Talk of reconciliation and future harmony will be meaningless without these basic elements of justice. The Indonesian government must urgently protect those seeking the truth, as well as begin a process of accountability for the 1965-66 massacre. The international community must put aside its historical support for the Soeharto regime and take a stand for justice and human rights by working to establish an international tribunal to investigate and prosecute this Crime against Humanity.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/NGO/74
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (b) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201050 0*

ENG

Disappearances in Sri Lanka

1. The December 1999 recommendations of the Working Group on Enforced or Involuntary Disappearances to the Government of Sri Lanka (E/CN.4/2000/64/Add.1) have—all but for one—not been implemented. Although an Inter-ministerial Committee of Secretaries was appointed to look into implementation, it did not do anything substantial other than monitor payment of compensation to victims' families and pass on a list of alleged perpetrators of disappearances to the Department of the Attorney General. The recommendations and respective outcomes were as follows:

   RECOMMENDATION: "The Government should establish an independent body with the task of investigating all cases of disappearance which occurred since 1995 and identifying the perpetrators."

   OUTCOME: Due to the ongoing lack of such an independent body, there has been no investigation into tens of thousands of cases, nor has evidence been collected to prosecute cases. The usual excuse for not prosecuting is lack of evidence, yet there are people willing to give evidence unable to do so due to the absence of an independent authority to record it.

   RECOMMENDATION: "The Government should speed up its efforts to bring the perpetrators of enforced disappearances, whether committed under the former or the present Government, to justice. The Attorney-General or another independent authority should be empowered to investigate and indict suspected perpetrators of enforced disappearances irrespective of the out-come of investigations by the police."

   OUTCOME: Tens of thousands of people await such justice and nothing is being done.

   RECOMMENDATION: "The act of enforced disappearance should be made an independent offence under the criminal law of Sri Lanka punishable by appropriate penalties as stipulated in article 4 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance."

   OUTCOME: No steps have been taken to create such on offence. Not even a draft law has been made.

   RECOMMENDATION: "The Prevention of Terrorism Act and the Emergency egulations currently in force should be abolished or otherwise brought into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners".

   OUTCOME: The Prevention of Terrorism Act remains in force. The Emergency Regulations were suspended in September 2001.

   RECOMMENDATION: "Any person deprived of liberty should be held only in an officially recognized place of detention as stipulated in article 10 (1) of the Declaration. All unofficial places of detention, in particular those established by paramilitary organizations fighting alongside the Security Forces, such as PLOTE and TELO, should immediately be dissolved."

   OUTCOME: No action has been taken to dissolve non-official places of detention.

RECOMMENDATION: "The Government should set up a central register of detainees as provided for in article 10 (3) of the Declaration. Since the Human Rights Commission needs to be informed immediately of every arrest and detention under the Prevention of Terrorism Act and the Emergency Regulations, such a central computerized register of detainees might be established at its headquarters. Such a solution would, however, require a substantial increase in the powers and resources of the Commission."

OUTCOME: No register has been established. Even the National Human Rights Commission has not made any attempt to this end. While computerization would not be so difficult, due to communication advances in the country, the making of such a register is prevented as its existence would obstruct the style of law enforcement practices in Sri Lanka that violate international norms and standards. The National Human Rights Commission also lacks the resources to even carry out its most mundane tasks.

RECOMMENDATION: "All families of disappeared persons should receive the same amount of compensation. The differentiation between public civil servants and others seems discriminatory and should, therefore, be abolished. Compensation should not be made dependent on the confirmation as 'proven' by a Commission of Inquiry. In addition to these compensations, the families of disappeared persons should be supported, according to their needs, by other means, such as low interest loan schemes or scholarships for the children."

OUTCOME: Payment of compensation has been haphazard. People in some areas have received payments while others have not.

RECOMMENDATION: "The procedure for issuing death certificates in cases of disappearances should be applied in an equal and non-discriminatory manner to all families."

OUTCOME: The procedure for obtaining death certificates still does not help the displaced, as they have no access to divisional secretaries of their respective areas who should process applications for death certificates. Since the issue of certificates has to be carried out in the areas where the disappearances took place, a further obstacle is placed before internally displaced persons as many of the disappearances occurred during their displacement and they do not know at exactly what point it transpired.

RECOMMENDATION: "The prohibition of enforced disappearance should be included as a fundamental right in the Constitution of Sri Lanka to which the remedy of a direct human rights complaint to the Supreme Court under article 13 of the Constitution is applied irrespective of the fact whether the disappeared person is presumed to be alive or dead."

OUTCOME: A constitutional amendment has neither been made nor envisaged. The appropriate amendment would recognise the right to life as a fundamental right. Under article 126 of the Constitution dependents of victims would then be enabled to file rights cases. When the seventeenth amendment to the Constitution was discussed this matter could easily have been raised, but it was instead neglected. Meanwhile, a Supreme Court decision on fundamental rights has made it impossible for persons complaining of disappearances to find relief under the Constitution.

RECOMMENDATION: "The Government should instruct the special unit in REPPIA to respond to the cases submitted by the Working Group on a case-by-case basis, in order to enable the Working Group to solve the cases which were reportedly clarified."

OUTCOME: The Asian Legal Resource Centre is not aware as to whether this recommendation has been adhered to or not.

2. The major obstacle to the implementation of these recommendations is the unsatisfactory performance of the national prosecutor's office, which in Sri Lanka is the Department of the Attorney General. Recommendations to establish an independent prosecutor's office made by government-appointed commissions since 1946 have also been ignored. An independent and effective prosecutor's office is an integral requirement for correcting a serious legal breakdown. The mass disappearances in Sri Lanka are the manifestation of a justice system in serious crisis, thus posing a threat to the rights of people in all areas of life. Hence, in the view of the Asian Legal Resource Centre appointing an effective prosecutor to bring the perpetrators of mass disappearances to justice are essential to fulfill Sri Lanka's obligations as a state party to the International Covenant on Civil and Political Rights (ICCPR).

3. Under international pressure, the Attorney General had filed about 500 disappearance cases, however the number is insignificant in light of the mass disappearances recorded by four commissions and numerous other reports. Prosecutors and investigators have neglected many of these cases. One successfully prosecuted case was that of 24 schoolchildren disappeared by a school principal and some army officers, for which he culprits received around ten years imprisonment. Though an achievement, the case still raises many questions. The disappearance of 24 young children is a crime against humanity, however there is no such criminal offence in Sri Lanka. Even the causing of disappearances is not in itself a criminal offence. The most serious charge that can be filed against persons responsible for disappearances is abduction with intent to murder—but if bodies cannot be found, murder charges cannot be filed.

4. The above crime against schoolchildren was hushed-up for many years, despite complaints to the highest ranking army officers and head of the state. These high-ranking officers are therefore liable both criminally and under military disciplinary codes. But in general such cases if filed are only against junior officers. One reason for this is that the Disappearances Investigation Unit within the Police Department simply does not return files relating to senior officers to the prosecutors, claiming that its investigations are not complete. The Missing Persons Unit of the Attorney General's Department is then helpless to expedite action in those cases. Such delays are said to result from 'considerations of brotherhood'. Investigators are especially likely to protect senior officers at the expense of their juniors. The Missing Persons Unit has also chosen only cases where there is direct evidence of removal or disappearances, and has not looked into a large number of cases with strong circumstantial evidence. Victims removed involuntarily, detained and tortured and subsequently released or escaped have often been eyewitnesses to many atrocities in police stations and army detention centres but their information has not been utilized.

5. A remarkable feature of the 30,000-plus disappearances in Sri Lanka (excluding another 16,000 cases reported to the All Island Commission into disappearances that it did not have a mandate to investigate) is that they involved killings after arrest. Before being killed victims were normally interrogated in detention camps spread throughout the country. The state-appointed commissions of inquiry recorded these places of detention and the activities that took place in them but could not investigate further. In this regard the Final Report of the Presidential Commission of Disappearances, Sessional Paper No. 111 (1997) urged that a special investigation into 'torture chambers' run by the police and military be

undertaken. The officers assigned to camps known to have housed torture chambers can be established through official records. However up to date no action has been taken against these officers, and not even an investigating body has been appointed.

6. The locations of mass graves spread throughout the country have also not been investigated. In the early 1990s a few attempts to dig up graves occurred but did not involve professionals. Some work was also done at the Chemmani site, but a systematic investigation of mass graves in Sri Lanka is yet to occur.

7. The Attorney General has charged around 500 police and security force personnel against whom there is to date inadequate evidence to prosecute. The disciplinary code holds that any state officer facing a criminal case is interdicted from service until its conclusion, and is dismissed if convicted. Nonetheless, only some of those charged had been interdicted, and on 5 January 2001 the Inspector General of Police issued a general order granting re-instatement of any officers interdicted in relation to pending disappearance cases. The Asian Legal Resource Centre condemns this action as a violation of disciplinary procedure and an attempt to protect persons accused of causing disappearances. Disciplinary enquiries have also not been initiated against police involved in disappearances for violation of departmental rules. For instance, disappeared persons were found in police custody, but no entries made in the relevant books to indicate this, and nor has disciplinary action been taken against the officers involved. Officers are also promoted without regard to their involvement in disappearances or other gross human rights abuses.

8. The report of the All Island Commission into disappearances was handed to the president over a year ago but still has not been made public. The Asian Legal Resource Centre is aware that many people are still waiting to come forward and give evidence but are prevented due to lack of faith in judicial institutions that have failed to respond to mass disappearances with any degree of seriousness. The main responsibility for this failure lies with the Department of the Attorney General, which has failed to implement the recommendations of the UN Working Group cited above. We urge the UN Working Group and the Commission to seek a progress report on these recommendations from the Sri Lankan government.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/75
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (c) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: FREEDOM OF EXPRESSION

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201050 2*

ENG

Freedom of expression in Asia

1. In Asia, freedom of expression is widely suppressed under the pretexts of national security and public order, defamation, blasphemy, and—since September 11—'anti-terrorism'. Each year, many media workers and people who have voiced opinions different from the authorities have been detained, tortured, disappeared or killed.

2. A major source of the threat to freedom of expression is the abuse of national security laws. In many Asian countries, these laws have provided a wide range of powers to governments to suppress dissent. People have been arrested and detained without trial for exercising their freedom of expression. Publications have been banned as governments have considered them threats to "national security." The abuse of defamation laws has also jeopardized freedom of expression, as a tactic to deter criticisms from opposition or media against the ruling party or businessman. Some examples follow.

3. MALAYSIA: In Malaysia, the Internal Security Act (ISA) has been consistently used against people who criticise the government and defend human rights. The ISA provides for "preventative detention" without trial for an indefinite period. It is a convenient tool for the government to suppress freedom of expression. In 2001 the number of people detained under the ISA for their political and religious beliefs went from four to 25, and hundreds were arrested in connection with peaceful assemblies. In April, ten key leaders from Parti Keadilan Nasional (PKN, i.e. National Justice Party), the reform movement and human rights group Suaram, were detained without trial for allegedly attempting to overthrow the government through "street demonstrations and militant means". Six have been sent to the Kamunting Detention Camp on a two-year detention order; two were freed unconditionally, while the remaining two were freed under conditions. Furthermore, the Printing Presses and Publications Act 1984 requires an annual renewable license for any regular publication to be lawful. It was further amended in December 1987 to increase the government's power to ban or restrict publications and to prohibit court challenges to its actions.

4. The Malaysian Bar Council said in March 2001 that defamation claims and payouts there are the highest among the 54 countries in the Commonwealth. It cited, as an example, the case of a businessman who in February claimed damages totaling 1.3 billion ringgit (US$330,000) from various Malaysian newspapers for alleged defamation. In a ruling that alarmed many lawyers, in the same month the High Court told a private television station to pay a businessman 100 million ringgit for damaging his reputation by airing footage of him in police handcuffs.

5. SINGAPORE: Like Malaysia, the ISA in Singapore allows detention without trial and has often been used by the government to suppress political dissent or criticism. In addition, on 19 April 2001 a bill was passed to amend Section 42 of the 1994 Broadcasting Authority Act, permitting the authorities to declare that any foreign broadcasting service is "engaging in the domestic politics of Singapore" and therefore requires prior approval from a Minister for domestic transmission. The new regulations allow arbitrary suspension and banning of local retransmission of foreign broadcasts. Fines of up to Singapore $100,000 (US$55,000) may be levied on those found guilty.

6. Ruling party politicians in Singapore also often bring defamation charges against opposition leaders and demand huge compensation payments. JB Jeyaretnam, leader of the opposition Workers' Party, is one of only three opposition members in the Singapore Parliament. He was declared bankrupt by in January 2001 as a result of fines in defamation proceedings brought by the President. Under Singapore law, Jeyaretnam will be barred from running for office having been declared bankrupt after failing to pay scheduled

damages awarded to political opponents who had sued him for defamation.

7. KOREA: In the Republic of Korea, the National Security Law remains the biggest threat to freedom of expression, despite the fact that Kim Dae-jung, a former dissident and winner of the 2000 Nobel Peace Prize, became president in 1998. This law has limited the free expression of activists, journalists and artists who have presented no serious threat to national security. For example, Lee Chang-gi, Park Joon-young and Baek Oon-jong, chief editor and journalists respectively for the Jajuminibo magazine, were arrested on the 23 October and detained by the South Korean secret service. They were accused of violating the national security law by 'praising' North Korea in articles and interviews. Historically, many political leaders as well as students who had challenged the government were imprisoned under this law. Recently, as the labor movement grew stronger, and it has become practice to apply the law to union leaders.

8. PAKISTAN: Freedom of expression is also suppressed in the name of blasphemy. In Pakistan, the blasphemy law has been widely used to harass journalists and religious minorities who speak out their problems. In late January 2001, seven journalists working for the English-language daily *The Frontier Post* were arrested in the north-western town of Peshawar and charged under the nation's blasphemy law, which can carry the death sentence. The paper had published a reader's letter that was deemed to be blasphemous.

9. MYANMAR: Media workers in Asia are constantly subjected to political imprisonment and torture. A recent Reporters Without Borders report indicates that in Myanmar journalists have received long prison sentences for having "distributed information hostile to the state", owning undeclared video cameras, talking with foreign journalists or sending information to Burmese media in exile. 18 journalists are still imprisoned and many of them are in life-threatening conditions, as torture is commonplace in prisons there and some journalists suffer from serious mental disorders resulting from long periods of isolation.

10. Accordingly, the Asian Legal Resource Centre calls upon the Commission and all its conventional and extra-conventional mechanisms to work towards:

- The release of all those currently held under national security laws for the peaceful exercise of their right to freedom of expression;

- The reform of national security laws to conform with international human rights standards;

- The revision of defamation laws to ensure they are not used as tools of harassment and intimidation; and,

- The prompt and thorough investigation of any attacks or threats against media outlets, journalists, opposition politicians and supporters, to bring the perpetrators to justice.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/76
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (d) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 5 0 4 *

ENG

Impunity in Sri Lanka

1. In Sri Lanka there is near complete impunity for state officers alleged to have caused serious crimes such as murder, torture, disappearances, war crimes and crimes against humanity. The very judicial framework of the country in fact promotes and accommodates impunity. The present 1978 Constitution of Sri Lanka has placed all power in the hands of an executive president thus displacing the holders of power within the law enforcement sections of the government. The independence of the Attorney General (AG)—the chief prosecuting officer in the country—and the Inspector General of Police (IGP) has thus been deeply undermined.

2. The impact of impunity has spread into all areas of life. From over 30,000 cases of disappearances reported to state-appointed commissions of inquiry only about 500 cases have been prosecuted and even these have in most cases been conducted negligently. Cases of massacres—such as the Bindunuwewa Massacre (see E/CN.4/2001/NGO/70) in which about 60 armed law enforcement officers oversaw the murder of 24 young rehabilitation camp detainees—led to no satisfactory criminal action against all the culprits. Elections in Sri Lanka have seen much violence, and the General Election held on 5 December 2001 was considered the bloodiest to date, resulting in over 2,000 complaints of abuse and around 60 persons killed. Among them, the case of 10 persons killed in cold blood at Udathalawinne, Kandy district, has not yet reached a satisfactory conclusion. There are also many cases of well-known persons killed, such as BBC journalist M. Nimalarajan and prominent Tamil politician Kumar Ponnambalam.

3. More alarming still are the many cases of torture about which much evidence has been placed before the prosecuting authorities without subsequent action. Sri Lanka incorporated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into domestic law under Act No. 22 of 1994. This Act provides a minimum period of seven years' imprisonment for torture, however no officer has been punished under this law despite the police's endemic use of torture and Supreme Court findings against many. There are numerous other cases of rape and murder in which state officers have been alleged culprits but have been able to escape from the law.

4. The reason that impunity in Sri Lanka occurs to this extent is due to the virtual collapse of two institutions: the police and the prosecution branch, which functions under the Attorney General. Police investigations into offences allegedly committed by other police suffer from the loyalties that police officers exercise on behalf of each other. For example, investigation files on senior police that have been passed from the Missing Persons' Unit (MPU) of the AG's Department to the Disappearances Investigation Unit of the Police Department have even after many years not been returned to the MPU. Related records routinely kept at police stations are destroyed despite instructions by the authorities—including the IGP—to keep them protected till criminal investigations are over. No action has been taken against those who have caused their destruction. Police tampering with documents has become so common that a November 2001 Supreme Court judgement observed that

   > it is unsafe for court to accept a certified copy of any statement or notes recorded by the police without comparing it with the originals. It is a lamentable fact that the police who are supposed to protect the ordinary citizens of this country have become violators of the law, and may ask with Juvenal, quis custodiet ipsos custodes—who is to guard the guards themselves?

5. The failure of the supervisory functions of high-ranking police officers is due to the influence exercised over the leadership of the police force by the political authorities. The Seventeenth Amendment to the Constitution of Sri Lanka, certified on 3 October 2001,

has, among other things, created a National Police Commission. However for this Act to become effective it is necessary to appoint the Constitutional Council which was also promulgated by the same Act. The Constitutional Council, once appointed, will have powers to appoint the commissioners for the National Police Commission. Thus were it to proceed, the speedy appointment of the Constitutional Council followed by the National Police Commission could create an opening to address some of the more important problems impeding and obstructing independent criminal investigations in the country.

6. The other institution that has contributed to the practices of impunity prevailing in the country is the prosecution branch under the AG's Department. Several state-appointed commissions since 1946 have consistently recommended the establishment of an independent public prosecutor's office, however this recommendation has not been carried out—apart from a short attempt in the early 1970s. The creation of an effective independent prosecutor's branch is an essential condition to ending the climate of impunity. The Vigil Lanka Movement—an association of lawyers in Sri Lanka—has held rightly that

> The practice that has got established over the years is that the prosecutor—officially the Attorney General—deals with prosecutions only and exercises no function relating to investigations. In practice, crimes which are not considered grave are also prosecuted by the police. In many jurisdictions, the situation has now changed, with representatives of prosecuting departments playing a greater role in advising on investigations into crime and preparing prosecutions at a much earlier stage before receipt of the completed files from the police. Adoption of a similar practice would improve the quality of criminal investigations in the country. Such advice from professional prosecutors can also go a long way to elimination of torture. Often, torture is taken as an unavoidable component in police investigations. This primitive method of investigation needs to be replaced with more sophisticated forms of investigation with better use of forensic facilities. In those circumstances, the intervention of professional prosecutors will also be helpful in instilling professional habits of proper investigation on police investigators.

7. The judiciary too has suffered setbacks in recent times. A November 2001 report by the International Bar Association arising from the visit of a delegation to Sri Lanka has accurately observed that the perception of a lack of independence of the judiciary was in danger of becoming widespread and that it was extremely harmful to respect for the rule of law by ordinary citizens. It was concerned that not only is there a perception that the judiciary is not independent, there may indeed be some basis in fact for the existence of such a viewpoint in relation to a minority of the judiciary. There were also serious concerns expressed about the discipline, retirement, appointment, transfer and promotion of judges under the auspices of the Judicial Services Commission (JSC). The delegation was not confident that the JSC is acting entirely without outside interference.

8. The Asian Legal Resource Centre is greatly concerned by the alarming degree of impunity prevailing in Sri Lanka. The Centre is aware of the tremendous frustration of the general public there caused by this situation. Without urgently required remedies, the enforcement of any rights will become increasingly difficult in Sri Lanka. The Centre therefore urges the Commission to apply all appropriate measures to the Government of Sri Lanka that it might make the appropriate reforms before conditions in the country deteriorate any further.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/77
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (e) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: RELIGIOUS INTOLERANCE

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201050 6*

ENG

Religious Intolerance in Asia

1. Freedom of religion is guaranteed by article 18 of the Universal Declaration of Human Rights. Notwithstanding, the Asian Legal Resource Centre concurs with the Special Rapporteur that "the situation with regard to intolerance and discrimination based on religion or belief is alarming" (A/55/280, paragraph 133). In the last year, Asia has witnessed a marked increase in the level of religious intolerance and overt forms of disrespect and aggression.

2. Violations of the right to freedom of belief are closely associated with violations of the economic, social and cultural rights of minorities and marginalised communities. Unequal distribution of wealth, unequal access to limited resources, loss of identity, loss of authority among the traditional leadership of many minority groups and other trends linked to globalisation have all exacerbated intolerance and contributed to the growth of extremism.

3. States have failed to take remedial action to control extremists' operations and prosecute criminal activities, in spite of calls that "states and the international community must condemn [religious extremism] unequivocally and combat it relentlessly in order to preserve the human right to peace" (A/55/280, paragraph 136). The most tragic outcome of this failure is that it fuels, rather than appeases, the further development of belligerent attitudes and actions among extremist factions.

4. Religious fundamentalism is creeping subtly into areas that have hitherto remained largely secular. Increasingly, Asian political parties are forming along religious lines, increasing the potential for intolerance and sectarianism. A summary of particular conditions in certain states follows.

5. MYANMAR: Although the government of the Union of Myanmar claims to safeguard religious freedom, indications are otherwise. While a predominantly Buddhist country, there are also large Christian and Muslim communities in Myanmar. Notwithstanding, the government emphasises Buddhist ceremony in its performance of routine state functions. In so doing it ostracises other religious groups and sets Buddhist standards as the norm for state institutions. Students in schools are thus obliged to participate in Buddhist ritual irrespective of their religious beliefs. Office-holders in state agencies are almost without exception Buddhist.

6. The Asian Legal Resource Centre is greatly concerned by recent reports of religious riots between Buddhist and Muslim communities in central Myanmar. Clashes have occurred throughout most of 2001 and are known to have been particularly severe in October, when events in the towns of Pegu, Pyi, Hinthada and others are understood to have left around a hundred people killed, hundreds injured and caused considerable damage to property. The government has since declared a state of emergency and imposed curfews in these areas, however some reports suggest that, as in previous instances, government agencies did not intervene until after considerable damage had been inflicted upon the smaller Muslim communities. The annual International Religious Freedom Report released by the US State Department in October 2001 also asserts that government instigators were among the crowds involved, some posing as monks. Islamic groups claim that in the aftermath of the clashes the greatest impositions have been placed on Muslims, restricting their movements and increasing surveillance of Muslim holy centres. A government order of 5 November has reportedly denied permission for Islamic public gatherings.

7. The long-term maltreatment of Rohingya Muslims in the west of Myanmar is also a matter of great concern. Independent agencies have reported on the tragic plight of the Rohingyas—who are discriminated against and denied equal rights with others on the specious grounds that they are illegal immigrants—since the exodus of hundreds of thousands into Bangladesh during the early and mid-1990s. Although most were subsequently repatriated under dubious circumstances, reports of their maltreatment on the basis of religion and descent have continued. These reports cite repeated and systemic instances of arbitrary execution and arrest, torture, forced relocation, excessive and arbitrary taxation, forced conversion, travel restrictions and destruction of mosques.

8. Although Myanmar's Islamic community has borne the brunt of religious discrimination there, reports also indicate that Christian groups have suffered less overt persecution. A recent study by Christian Solidarity Worldwide alleges that new laws in Myanmar have been imposed specifically to restrict the Christian community's rights to freedom of worship. The new laws are reported to have forced the closure of all churches less than one hundred years old and sent dozens of priests into hiding. Other sources indicate that bans have also been placed on the construction of new church buildings or the holding of services in homes in some parts of the country, and in some areas forced conversions of Christians to Buddhism are ongoing.

9. In his statement to the 56th Session of the UN General Assembly of 9 November 2001, the Special Rapporteur on the situation of human rights in Myanmar expressed his deep concern over the deterioration religious rights there. The Asian Legal Resource Centre welcomes his statement and encourages him to vigorously pursue reports of violations as an integral part of his mandate.

10. INDONESIA: Sectarian conflict between Christians and Muslims has raged on in Poso, Sulawesi since late 1999. Some 2,000 people have died as a result, not to mention the damage to property. Current reports speak of a large number of persons being displaced after in October this year perhaps thousands of armed militants from other provinces arrived. Hence there have been reports that the latest situation has been exacerbated by infiltration from certain extreme groups originating from outside the area, including the Java-based Muslim group, Laksa Jihad.

11. A closer examination of so-called religious tensions and conflicts in Indonesia reveals a remarkably common pattern: hidden behind the veil of complexities and ambiguities, invariably there emerges the indelible hand of agents or parties with vested interests in provoking conflict. These range from efforts to destabilize the existing political power structure, to seeking economic advantage or simply finding scapegoats for economic and social ills. The state has failed lamentably to arrest the mounting violence and hatred on either side of the religious divide. Accusations of law enforcement authorities' complicity have not been investigated.

12. Given the gravity of the situation and the likelihood of continued violence it is important that the state adopt the following measures:
    - Prosecute all that have been involved in criminal activities irrespective of their religious or ethnic origin in Ambon, Sulawesi and other areas where there have been sectarian violence;
    - Disarm militiamen and fighters of the conflicting camps;
    - Prevent the entry of large groups of persons from other areas without due authorisation;
    - Rehabilitate all displaced persons and provide them the necessary security;
    - Expel from the areas of conflict the persons from the other regions, particularly the

alleged members of laskar Jihad;
- Provide equal opportunities in education and employment both to Muslims, Christians and other ethnic groups in the areas of sectarian violence;
- Create an environment conducive to reconciliation instead of creating villages separated on the basis of religion;
- Explore the possibility of non-denominational schools fostering understanding and trust;
- Form village-based peace committees composed of civilians of various religious communities and the members of the law enforcement agencies.

13. SOUTH ASIA: In South Asia India and Nepal in particular continue to discriminate and deny basic rights on the basis of existing religious beliefs and practices. As was stated in the Asian Legal Resource Centre's previous submission in 2000, the caste system continues to deny basic rights to a at least 160 million people in these countries. When serious attempts were made to bring this major issue to the attention of the international community at the September 2001 World Conference against Racism in Durban, South Africa, the Indian Government took a very negative attitude and tried desperately to prevent any in-depth discussion or the passing of resolutions regarding this matter. Discrimination against Dalits and other so-called 'outcastes' has generated a sense of apathy and personal worthlessness among parts of the society and is in conflict with religious goals of justice and equality. These states have not taken effective action either to change the prevailing mindset or to implement existing anti-discrimination legal provisions.

14. Considering the immense cultural, social, political and the economic harm that the caste system has perpetrated over centuries, it is time that the Asian countries—India in particular—take and the Commission take the following actions to rectify the situation:
- Deem untouchability a crime against humanity punishable in the severest forms;
- Appoint a Special Rapporteur or Working Group on discrimination on the basis of descent and work;
- Since women have been found to be the most victimised among the Dalits, make distinct provisions for them in planning, allocation of funds and the reservation of facilities in education and employment;
- Create statutory bodies at the national level for monitoring atrocities against Dalits.

15. INDIA: India is experiencing frightening growth in religious extremism. What is of great concern is the impunity with which a number of extreme Hindu fundamentalist groups function in the society, in sharp contrast with what is stated in the Constitution of India, that it is a 'Sovereign Socialist Secular Democratic Republic'. Figures provided to the Minorities Commission by various state police departments indicate that the number of officially recorded attacks on Christians and Christian institutions rose sharply from 27 in 1997 to 86 the following year, 120 in 1999 and 216 in 2000. During the first three months of 2001, 37 incidents were reported. During 1997 and 1998, five individuals died on account of such incidents. The number of fatalities went up to 12 and 13, respectively, in the next two years. The number of those injured rose from 45 in 1998, to 91 and 132 in the next two years.

16. By way of an example, in one attack around 100 Hindu fundamentalists are reported to have destroyed the Philadelphia Church in Tichakiya village, Madhya Pradesh, on 29 October 2001. Samson Christian, a National Executive member of the All India Christian Council, wrote a letter to the President of India after the incident in which he

alleged that police authorities had refused to register a complaint against the attackers. He claims that Pastor Bachubhai Vikabhai Bhuria, who works with about 150 Christian families of the village, approached the police, but they instead supported the Hindu attackers. Indeed, the current penalties against religious intolerance in India are neither effective nor properly enacted.

17. PAKISTAN: In Pakistan also there is evidence of discrimination against religious minorities. Those worst affected are the Ahmadis, low caste Hindus and Christians. The present political leadership, lacking a mandate from the people, is obviously reluctant to take any decisive measures that would hurt the feelings of the majority and is simply allowing the rights of minorities to be eroded. In the political system, religious preference is used as the basis for the present 'separate electorate system', whereby Christians are compelled to vote for four special Christian representatives. Every request to overturn this law and allow minorities to vote for national candidates has been rejected, further aggravating minority feelings that they are treated as second-class citizens and are discriminated against on the basis of religion. Since no attention has been drawn to this situation by the state we are compelled to bring it to the attention of the Commission.

18. The Asian Legal Resource Centre urges the Commission on Human Rights to take religious intolerance in Asia as a matter of grave concern and urgency. Literally millions of people are suffering the terrible burden of religious discrimination. The levels of violence both within and between communities with different beliefs are intense. A truly explosive situation exists that calls for the Commission's consideration and effective and immediate action through all its conventional and extra-conventional mechanisms to ensure religious tolerance and the respect for the rights of others.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/78
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (f) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: STATES OF EMERGENCY

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 0 0 2 0 2 1 0 5 0 8 *

ENG

National Security Laws in Asia

1. "National security" is one of the most controversial concepts in current political and human rights discourse. On the one hand, states usually maintain that "national security" is necessary for the survival of their society and people and should take precedence over all other interests. On the other hand, human rights defenders hold that individual rights and liberties should never be compromised, whether in the interests of "national security" or otherwise.

2. The concept of "national security" emerged during the Cold War, its main proponent being the United States, which used it as the foremost weapon to fend off communist influence. The United States promoted the worldwide spread of "national security ideology", backing "anticommunist" authoritarian dictatorships and rulers in many countries.

3. In the aftermath of the Cold War the national security model was expanded to create conditions for economic globalization, again spearheaded by the United States. In Asia, economic development was subsumed within the national security ideology of most governments. These regimes have increasingly adopted repressive measures argued necessary to ensure economic growth, but in fact designed to silence dissent and political opposition.

4. National security ideology is directly linked to militarization. Since the late 1960s Asian states have become increasingly militarized. Under the pretext of national security, most Asian governments have armed themselves and waged war against their own citizens. The more militarized the state, the more pronounced becomes its security orientation. In the 1960s and 1970s, the drastic consequences of this development were evident in widespread martial law, authoritarian dictatorships, repression and anticommunist purges. In states like Korea, Indonesia and Myanmar, state-induced violence continues to be the norm.

States of Emergency, under which most national security laws are enacted, are allowed for under article 4 of the International Covenant on Civil and Political Rights (ICCPR). However, there are clear and unequivocal limitations to the powers of government to deviate from the principles of the ICCPR:

- In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed;

- To the extent strictly required by the exigencies of the situation;

- Provided that such measures are not inconsistent with their other obligations under international law;

- Do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin; and,

- Do not breach provisions in articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18, including the rights to life, freedom from torture, inhuman or degrading treatment or punishment, freedom from slavery, slave trade and servitude and freedom of thought, conscience and religion.

5. In Asia, "national security" has been incorporated within national legal frameworks. Although known by different names, "emergency" acts have deliberately incorporated a common flaw: vital concepts such as "terrorism", "subversion" "state/public security" have

not been clearly defined to describe the precise nature of the perceived threat. It is this ambiguity that has given governments wide scope in exercising such legislation, whether or not within an emergency situation, and thereby protect themselves from public scrutiny and criticism. In this militarized scenario, popular dissent is stifled and condemned as "subversion". The "enemy" is among and within the population and consequently the people themselves are perceived to be a threat.

6. National security laws in Asia share the following characteristics:

- Widespread powers of arrest, interrogation, intimidation and detention without purview of judicial procedures;

- Stringent provisions for restriction of movement, both individual and collective, such as curfews, house arrest and internal exile;

- Severe penalties, including the death penalty for vaguely defined "terrorist" offenses and other politically-motivated acts;

- Provisions for special courts with procedures lacking the traditional safeguards available to a defendant under ordinary criminal law; and,

- Indemnification of state security force members against legal action for exercise of powers under these laws.

7. To illustrate, the Asian Legal Resource Centre draws the Commission's attention to the current situation in Singapore and Malaysia. In 1960 these two countries re-enacted the Internal Security Act (ISA) that both had inherited from the British colonial regime. The ISA in both countries is virtually identical. Section 73(1)/74 stipulates that

> any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has reason to believe (a) that there are grounds which would justify his detention under section 8; and (b) that he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia/Singapore or any part thereof or to maintenance of essential services therein or to the economic life thereof.

Under Section 8,

> if the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia/Singapore or any part thereof or to the maintenance of essential services therein or the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.

8. In Singapore, since Mr Lee Kuan Yew and his People's Action Party (PAP) came to power in 1959, the ISA has been used primarily to stifle political opposition and critics. According to an ex-political prisoner, this ISA represents "state terror in its raw form; the terror comes from the constant threat of indefinite detention and the immediate threat of torture, mistreatment, torture, and public humiliation". The most well-known cases of ISA implementation in Singapore have been:

- Operation Cold Store, 2 February 1963, when the joint Security Council of Singapore, Malaya and Britain detained without trial all leaders of the opposition parties and and labour

movement in the two countries, some for as long as 17 years.

- Chia Thye Poh, who in 1961, was one of three members of parliament who formed the Barisan Socialis political party. In October 1966, Chia was one of 10 Barisan members who walked out of parliament to fight the PAP on the streets. Three weeks later, Chia was arrested. He spent the next 23 years in detention. In that period, PAP did not produce any evidence or charge Chia for any offence.

- T T Rajah, who in 1974 was arrested and detained for 18 months. In 1971 he had acted for some ISA detainees and had taken out summonses against individual officers who had allegedly beaten his clients.

- G Raman, a lawyer for political prisoners, who in 1977 was himself arrested together with several others for a "communist conspiracy".

- A university lecturer and 8 University of Singapore Chinese Society members arrested in 1979 for pro-Communist party of Malaya activities.

- A total of 22 persons arrested and detained on 21 May and 20 June 1987 for being part of a "Marxist conspiracy to overthrow the government by violent means".

- Francis Seow, former Solicitor General and Law Society President, who in May 1988 was arrested and detained while taking a statement from a client detainee from the 1987 arrests. Earlier he had incurred the wrath of the government by his criticism of the Newspaper and Printing Presses Bill.

9. Over the last 20 years political power in Malaysia has become increasingly concentrated in the hands of Prime Minister Dr Mahathir Mohamad. The judiciary, media and police have become no more than tools to be manipulated by this leader to perpetrate his rule. Mahathir's government has long been criticised both locally and overseas for its use and abuse of the ISA. Since April 2001, the government has used the ISA to arrest and detain without trial nearly thirty reformist and political activists from opposition political parties and non-government organisations. These have included youth leaders of the National Justice Party (keADILan) and activists from the Islamic Party (PAS), all accused of being involved in illegal activities to topple the government by violent means. Ironically, Mahathir recently used the current United States-led "anti-terrorist" campaign to justify his own continued use of the ISA against his political opponents. Whereas in the past thousands of people were detained under Malaysia's ISA on the grounds of being procommunist, now hundreds may be detained without trial on allegations of being involved in militant Islamic movements.

10. In conclusion, the misuse of national security laws in Asia is pervasive and explicit. The Asian Legal Resource Centre urges the Commission to investigate and pursue those Asian states deemed in violation of article 4 of the ICCPR through their manipulation of such instruments to oppressive political ends.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/79
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (g) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201051 0*

ENG

Denial of the right of conscientious objection to military service in Republic of Korea

1. The Commission has reaffirmed the universal right to conscientiously object to military service as a legitimate exercise of the right to freedom of thought, conscience and religion laid out in article 3 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights (ICCPR) (E/CN.4.RES/1998/77). The Commission resolved that states should thereby establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of their particular beliefs. The Commission has recommended states with a system of compulsory military service provide various forms of alternative service for conscientious objectors compatible with the reasons for their conscientious objection, of a non-combatant civilian character in the public interest and not of a punitive nature.

2. However in the Republic of Korea about 1600 conscientious objectors to military service are now serving sentences in military prisons. Moreover, almost 100,000 people in the past six decades have completed their sentences and automatically became ex-convicts, facing many social obstacles as a result. According to a report by the Ministry of Defence, there were 361 conscientious objectors in 1996, 377 in 1997, 515 in 1998, 607 in 1999 and 632 in 2000 who received a three-year sentences after being charged with violating military law.

3. The Republic of Korea is the only country in the world without any form of alternative service for conscientious objectors, even though the government ratified the ICCPR in 1990 and approved the Commission's resolution on the right of conscientious objectors to military service in 2000.

4. In the Republic of Korea most conscientious objectors are members of the Jehovah's Witness. If they object to military service they are sentenced for three years as well as facing social discrimination, such as fewer employment opportunities. Even though there was one recent exception—on 13 September 2001 the Seoul District Court sentenced two Jehovah's Witness believers to only one year and six months in prison— the government has not changed its policy on conscientious objectors.

5. Previously some progressive national assemblymen tried to enact an alternative law but without success. This legislative effort was blocked because it was strongly opposed by the largest conservative Christian group in the Republic of Korea, which insists that the Jehovah's Witness is a heretical group. This group claimed that if the government enacted an alternative law it would mean recognition of the Jehovah's Witness as a religion.

6. The right of conscientious objection to military service is a fundamental human right as well as a legitimate exercise of the right to freedom of thought, conscience and religion. The Government of the Republic of Korea should provide conscientious objectors with various forms of alternative service and should refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service, as soon as possible.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/80
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 12 (a) of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 5 1 2 *

ENG

Rape and police inaction in Sri Lanka

1. Sex, the most beautiful and sacred element of life and creative source of energy, is frequently debased into a tool—a weapon—to defeat, humiliate and destroy Asia's women and children. This form of torture can be found in all areas of society: the family and marriage, schools and colleges, the workplace and religious institutions. Moreover, the police, military and the state—institutions charged with protecting society—are also far too often perpetrators of this form of torture, and agencies that often re-victimise the victim. Although the Sri Lankan government has ratified the Convention Eliminating Discrimination Against Women (CEDAW), no effective action has been taken either to arrest the rising trend in violations of womens' rights and prosecutions of the victims of violence, or to establish systems that will safeguard the honour and dignity of women and children.

2. Many rapes occur in the tea plantation areas of Sri Lanka, however most go unreported for a variety of reasons, including reluctance or refusal on the part of the police to register complaints of rape. The recent tragic case of a young Tamil woman, Miss S. Umadevi, 23, of Nawalapitiya, Imbulpitiya Estate, serves to illustrate. Miss Umadevi was abducted, raped and murdered on 12 September 2001 while on her way home after attending typing class in Nawalapitiya town. Her parents reported her missing to the Nawalapitiya Police on the morning of 13 September, after exhausting all of their own enquiries as to her whereabouts. The father of the victim has stated that the police officer recording the report was abusive and unwilling to assist them. When shown a photograph of the young woman missing, the police officer reportedly replied, "This girl must have gone off with some young man. What are we to do with this photo?" and put it away. That evening, Miss Umavedi's father heard that the corpse of a young woman was found in the shrubland near the Malkanda Bridge. He went to that spot and identified the body as that of his daughter. He informed the police at Nawalapitiya and gave the name of one particular person whom he suspects w as the perpetrator of this crime, but the police have not shown any concern and have so far failed to arrest any suspects. They have also not once visited the victim's home to investigate.

3. Rape cases in these areas also go unreported as victims and relatives have no confidence in obtaining justice from court hearings, and are unwilling to be subject to social pressure and public humiliation in a society that tends to put its blame on the victim. Those cases that are dealt with by the police and courts often result in a failure on the part of the police to conduct impartial investigations and deficiencies in the judicial process that force the victim to relive the traumatic experience of rape in public, effectively raping the victim again.

4. Many cases involve members of the security forces themselves, particularly in civil war conflict areas. For instance, a pregnant woman, Wigikala Nathakumar 22, already with one child, and Sivamani Arjunan, 24, a mother of three, were arrested, raped and tortured by about ten navy or police personnel on 19 March 2001. At 10:30pm the officers entered the private lodge at Uppukulam, Mannar, where the women were staying, and took them in a van to the Special Investigation Unit, Mannar, where they were repeatedly raped and tortured by the officers. Sivamani has testified that, "Two men then pinned me down on the van's floor while another stripped me and raped me. I was screaming and pleading when a policeman put his foot on my mouth to stifle me. Inside the building they forced Wigikala, who was standing naked, to strip my underwear. I was hung upside down by a knot from a pole placed between two tables, with my hands and feet tied. Then the men in the room poked our genitals and tortured us until dawn."

5. In a large number of cases involving rape, murder and other crimes committed by the members of the security forces in the conflict areas, the perpetrators are then transferred to Colombo. This makes it impossible for witnesses to attend hearings, resulting in cases either being indefinitely delayed or the alleged criminals not been convicted. Many members of the security forces are thus allowed to go free for horrendous crimes such as the above because the pressure eases once arrests have been made, irrespective of whether or not the case is actively pursued.

6. The Asian Legal Resource Centre has repeatedly pointed out that the Attorney General of Sri Lanka should be held responsible for all prosecutions. However this responsibility is often neglected, as the Attorney General depends on reports compiled by the police, and if the police do not forward such files, the Attorney General is inactive. To prevent this situation, the Attorney General should ensure that investigations into all crimes proceed in a proper manner. Despite repeated protests, there has been no attempt to correct the defective prosecution system in Sri Lanka. Without reform, rape, murder, torture and impunity will continue. Now is now the time to act to ensure that criminal investigation is independent and transparent, that all perpetrators are arrested quickly and prosecuted using the full force of the law.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/NGO/81
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 12 (a) of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201052 1*
ENG

Honor Killing (Karo-Kari) in Pakistan

1. Pakistan ratified the Convention on the Elimination of All Forms of Discrimination against women (CEDAW) in 1989. Despite that, there is a very high level of violence against girls and women in the country. Judging from the increased number of honour killings, it is clear that the Government of Pakistan has failed completely to address this major violation of women's' rights.

2. According to the findings of Human Rights and Legal Aid Centre in Karachi, in the first three months of 2001, 120 Pakistani women were murdered in the name of Honor Killing. The majority of women were shot to death. Others were axed, burnt and clubbed to death. Those who kill in this way are called Ghairatmand (those possessing honor) and there is no grief permitted in the victim's family. The victims are condemned for good. That is why the custom takes place overtly and brutally. The police do not intervene in cases of Honor Killing for it is recognized as a private family matter. The killers act under the 'traditional' institution of Jirga, which protects criminals who victimize innocent women and men, first accusing them of adultery and then slaughtering them. Significantly, not a single perpetrator has ever been put to trial. Because of this pathetic indifference of state agencies and successive governments to this heinous crime, there has been an increase in incidents.

3. By way of example, Perviaz Gujar was kidnapped, tortured and finally murdered in the name of 'honor'. Perviaz was not from the majority Suddhan tribe of his region, and as a member of a minority group he was refused permission to marry his chosen love, Raita. The couple, however, managed to have a secret marriage. During this period Raita became pregnant. Haji Mohammad Yaqoob Khan and other relatives of Raita made it a question of their honor to kidnap Perviaz and torture him for three days. He escaped and fled to his home, but early next morning one of Haji Yaqoob's relatives, Ashraf, came to Perviaz's house and took him outside at gunpoint, where he was murdered. No one was allowed to provide him with any medical assistance. This is not the end, however, but the beginning of the barbarism in the name of 'honor' that the Suddhan tribesmen have planned. They intend not only to kill other relatives of the deceased but are also determined to murder Raita, who is pregnant and whose killing will be a dual murder. Such incidents of kidnapping, murder and torture are features of the region, however none of these crimes are registered by the police or reported by the press because of pressure from leaders of the majority tribe.

4. Given this increasing violence against women and some men, and the failure of the Government of Pakistan to address the issue of Honor Killing, the Asian Legal Resource Centre demands that:

   - Existing international commitments, including CEDAW, be translated into national legislation;

   - Existing domestic laws be brought into line with international human rights

standards;

- Law enforcement agencies be educated on their implementation;

- Laws be strictly applied without distinction;

- A national committee be appointed both to monitor cases of violations and to advise the government on the implementation of existing laws; and,

5. A progra.n be initiated to educate the public on the ssue of Honor Killing, since no long-term success can be expected without attitudinal change.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/82
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 12 (a) of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 5 2 3 *

ENG

Violence against Dalit women in India and Nepal

1. 260 million Dalits in South Asia suffer structural discrimination and violence on the basis of descent and occupation. Dalits are stigmatised as "polluted" and "impure" and therefore "untouchable", denying them entry into places of worship, participation in religious festivals, access to common drinking water, restaurants and other public places. They are assigned to menial and degrading work, including cleaning toilets by hand, skinning and disposal of dead animals, digging graves and sweeping, and forced prostitution of women and very young girls, all of which carry intrinsic health risks. These practices, including restrictions on inter-caste marriage, segregation of housing settlements and cemeteries and other apartheid-like practices against generations of Dalits have the cumulative effect of systematically destroying their individual and collective identity, dignity and self-respect.

2. Dalit women, in addition, suffer discrimination and violence on the basis of gender at the hands of men and women of higher castes as well as those of their own community. The extreme vulnerability of Dalit women to violence is rooted in the structural precariousness of their economic, social and political position, both as Dalits and as women. Daily, Dalit women are victimised and violated. They suffer mental and physical assaults when fetching water from public wells and taps, are consistently subjected to physical and sexual violence by higher caste landlords, are not allowed to enter temples or houses of upper caste people, and are not accepted by higher-caste families they attempt to marry into. Dalit women work at least as hard as the men, are generally paid very little, and usually in kind. Having no economic power in their families, who themselves are living in conditions of poverty, Dalit women are among the most exploited and poorest people in the country.

3. Traditional (pseudo-religious) practices directed against Dalits—for example, the Devadasi practice of dedicating young pre-pubescent girls to a deity or a temple—have evolved into an accepted system of prostitution serving both priests and higher caste men in the villages. The "dedicated" girls, unable to marry or work outside the temple, live out their lives in sexual servitude. During caste violence—which can occur at any time a higher caste person or group feels challenged or wishes to assert their dominance—women are raped, mutilated and murdered as part of the "punishment", "humiliation" or "show of power". This is in addition to the brutality meted out to the whole Dalit community.

4. Although constitutional provisions in both India and Nepal stipulate proportional reservation of positions for women in national and local political structures, these are not implemented for women in general, and least of all for lower caste Dalit women. Article 11(4) of the Constitution of Nepal (1990) states that "no person shall on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be denied the use of public utilities". The National Code (1964) (Muliki Ain 2020 B.S.) made provisions to eliminate caste-based discrimination and Nepal has also ratified the Convention on the Elimination of All Forms of Racial Discrimination.

5. Dalits in Nepal—who make up 15–25% of the population—are still treated as socially untouchable, and are exploited and discriminated on the grounds of caste, although "untouchability" has been made punishable by law since 1990. A study by the Foundation for Economic and Social Change has revealed that 78% of Dalits are in extremely difficult living conditions due to unequal distribution of resources: for instance, the total Dalit literacy rate is 5 %, compared to the national rate of 66%.

6. As a result of poverty, discrimination and lack of access to the basic necessities, low life expectancy, high mortality and fertility rates and general ill health afflict Dalit

communities, especially the women and children. Of 2 million Dalit women in Nepal, there are maybe 10-15 women tertiary graduates. The small number who manage to get jobs in carpet factories, hotels, government and private offices are subject to sexual harassment and many forms of exploitation. The majority of Dalit women are relegated to the most difficult and undesirable occupations, such as scavengers and cleaners of public toilets. Under these conditions, women and young girls are vulnerable to trafficking practices, and many young girls are reported to be working in brothels in India, under conditions of debt bondage. An Indian Dalit NGO Federation study found that of the 1,590,000 Nepali women and girls working in Indian brothels, 80% are from Dalit communities.

7. Various reports throughout the past year have also related the horrendous static plight of Dalit women in India. According to the Human Rights Watch World Report 2000, violence against women in India, from female infanticide to dowry deaths and attacks on women whose male relatives are sought by the police, continued throughout the year. A study by Amnesty International into the plight of low caste women in the states of Uttar Pradesh and Rajasthan published in May 2001 sketched a depressing picture of stripping, beating, rape, sexual abuse and harassment committed against poor Dalit or tribal communities by landlords, upper caste villagers and police officers. Fewer than 5 % of these cases ever make it to court, because the intense discrimination and lack of respect for the humanity of the lower caste victims makes it virtually impossible for victims, especially women, even to file a complaint at a police station—much less have it received, processed and investigated seriously and justly.

8. According to Amnesty International, the legal problems start with the local policemen charged to register the First Incident Report by a victim of violence. When perpetrators are named belonging to upper-caste and/or influential local families, policemen usually refuse to register the complaint. Worse, policemen have been known to assault and insult the women who try to register complaints of rape or sexual assault. They also routinely demand bribes, intimidate witnesses, cover up evidence and beat up the women's husbands. 30% of rape complaints by lower caste women are routinely dismissed as false by local police officers. Even in the few cases that reach the courts, lawyers sometimes accept money from the accused to advise their clients to drop the case. Policemen themselves sometimes join in attacks on rape victims by gangs of upper-caste villagers seeking to prevent a case from being pursued, instead of acting to prevent these attacks. Rape victims have been murdered in this way with total impunity, including for the policemen. Some cases of violence against Dalit women documented by Amnesty International follow:

- Bhanvari Devi, from Rajasthan, drew water from the upper-caste well in her village and had her 11 year-old daughter beaten unconscious as punishment. When she went to complain at the local police station she was thrown out and called a whore. Later that night, a gang of upper-caste locals sexually assaulted her in her hut.

- Ramvathi was gang-raped by 5 men in her village in Uttar Pradesh, when she and her husband refused to turn over their land to upper caste villagers. Her husband Ram Chandra went to the local police station to lodge a complaint, but the local police refused to file a report. Ram Chandra then made an application to the district Superintendent, who ordered the rape to be investigated, but the local police were not held to account and continued to refuse to take action on the case. Threatened by influential people in the village. Ramvathi and Ram Chandra moved to Ramvathi's parents' village some distance away. 4 months later when they returned to the village to reclaim their property they were attacked by a large gang of men. Ramvathi was again raped, and this time she died from her injuries. Under pressure from activists, local police have arrested some of the suspects, but no

further action has been taken and no compensation paid to Ram Chandra for his injuries or his wife's murder.

- 18 year-old Narbada from Udaipar District of Rajasthan was raped by a Rajput (upper caste) landlord in March 2000. The attacker's mother reportedly heard Narbada's screams but did nothing to stop her son. She in turn beat Narbada and forbade her to go to the police. When Narbada attempted to go to the police regardless with her uncle, 50 Rajputs stopped them. On reaching the police station two days later, they were verbally abused and told to pay Rs. 500 ($11) if they wanted to file a complaint. They refused and travelled 3 ½ hours further to the district headquarters where the Superintendent recorded their complaint. Police were present during her medical examination, which finally took place 4 weeks after the rape. When the case went to court, the Public Prosecutor tried to persuade Narbada to withdraw the complaint. She and her family continue to face harassment from members of the Rajput community.

9. In recent years Dalit communities have risen up and organised themselves to assert their rights, as evidenced by the hundreds of Dalit representatives at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. In spite of this presence, it is a dismal indictment of the international community that there was no mention of caste discrimination in the final document of the Conference. Worse still, it is to be feared that all individual and collective action by Dalits to assert their rights will continue to be met with extreme violence, such as the burning or destruction of their homes, property and crops, and social boycotts, rape and murder of Dalit women by dominant caste members or their hired thugs.

10. The vulnerability of Dalit women victims of violence is further aggravated by caste and gender biases insidiously present in the law-enforcement systems of Nepal and India, as well as within the structures of state. When they fail to protect and provide justice to the Dalit community ultimately they must be held accountable for the perpetuation of caste discrimination and for the violence against the Dalit communities, both men and women.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/NGO/83
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 12 (a) of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0020105 25*

ENG

Acid attacks on women in Bangladesh

1. While violence against women remains prevalent throughout Asia, acid attacks on women, especially in Bangladesh, stand out as one of its most despicable and barbaric manifestations.

2. Women are guaranteed equal legal protection as men under article 2(c) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Bangladesh acceded in 1984. Article 5(a) states that parties to the Convention shall take appropriate measures to modify social and cultural patterns towards the elimination of prejudices and discriminatory practices. Women are also guaranteed equality and protection under article 3 of the Declaration on the Elimination of Violence against Women. Article 4 of the Declaration calls on states to eliminate violence against women irrespective of religious or cultural norms that may be invoked to condone it.

3. The number of acid attacks against women in Bangladesh is very difficult to document because many cases go unreported as the victims fear reprisals from their attackers. Nonetheless, many Bangladeshi non-government organisations claim that acid attacks have increased at an alarming rate in recent years. The Bangladeshi Acid Survivors' Foundation, established in 1999, notes that "acid violence is a relatively recent phenomenon, with the first documented acid violence case occurring in 1967". Figures from the Foundation indicate a distressing trend: 47 cases were reported in 1996, 130 in 1997, and 200 in 1998.

4. The immediate causes of these appalling and sometimes deadly acid-throwing attacks range from refusals of a marriage proposal, dowry disputes, domestic fights, and disputes over property. The physical effects of an acid attack are hideous. Skin tissue melts, and even bones can be dissolved. Many victims have lost their sight in one or both eyes. Since the victims are mostly poor women living in the countryside, they do not have money for medical treatment.

5. Acid attacks are one of the most vicious and sickening crimes not just because of the extreme pain they inflict on the women who are attacked, but also due to the lifetime stigmatization that follows. The physical and psychological consequences of acid attacks are extensive. Victims suffer from a severe loss of self-esteem, and often are unable to work or study. It is very unlikely that they will ever get married, dramatically affecting the victims' life economically and socially and causing their social isolation.

6. According to independent figures, very few acid attackers have been prosecuted, despite the fact that acid throwing was made a capital offence in 1983, and sentences from seven to twelve years in prison are mandated. According to the Bangladesh National Women Lawyers Association, of the 145 reported incidents it received in 1998, 87 cases were filed and a mere 14 men sentenced to prison.

7. The severe lack of prosecutions is an insult to the victims and reflects the underlying cause of the numerous acid attacks: Bangladesh is a male-dominated society where violence against women is a widely accepted part of everyday life. Many Bangladeshi men still see women as property and not as equal individuals, therefore not as people entitled to have an opinion. Hence, acid attacks are a barbaric response to the progress of women's economic and social position in Bangladesh.

8. According to the UN Population Fund's State of the World Population 2000 report, in terms of domestic violence against women Bangladesh is second-worst in the world, with 47 percent of all women violently assaulted by their male partners. This very clearly indicates that the Bangladeshi government is not doing enough to curb widespread gender violence. Particularly in the case of women attacked with acid, the lack of medical resources put to their disposal and the impunity enjoyed by most attackers reflects the lack of interest in solving this problem.

9. The improvement of the medical facilities for treatment of acid-burn victims and stronger enforcement of current laws on acid attacks would send a very positive signal to the victims and to Bangladeshi women in general. As the Asian Legal Resource Center does not condone capital punishment, it supports the use of long-term prison sentences for offenders under the current legal code, but not use of the death sentence. Efforts should also be made to secure legal assistance and protection for the victims, so that the attackers can be prosecuted without the women who have been attacked taking the risk of being re-victimized. Remedies are also needed to help the victims overcome problems faced due to the attack. Finally, the root cause of these acid attacks—the cultural patterns and values that discriminate against women—must be eradicated in keeping with the commitment the Government of Bangladesh made in acceding to CEDAW.

10. The Asian Legal Resource Centre urges the Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy, to pursue this very important issue with the new Government of Bangladesh in order to obtain effective remedies. The Centre urges the Special Rapporteur on violence against women and all other conventional and extra-conventional mechanisms of the Commission to take the following actions:

-Continue to address the issue of acid attacks on women in Bangladesh in their work and reports to the Commission;

-Request a report from the prosecuting branch of Bangladesh as to what actions have been taken to prosecute offenders of these crime, and request the Government of Bangladesh to adequately compensate the victims;

-Urge the Government of Bangladesh to use the media at its disposal to educate the public on ways to eradicate this crime; and

-Encourage the recently appointed National Human Rights Commission of Bangladesh to take effective action to study and make proposals to the government to eradicate this crime.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/NGO/84
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 14 (a) of the provisional agenda

SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201052 7*

ENG

1. In spite of numerous legal safeguards, the 200,000-plus Foreign Domestic Workers (FDWs) in Hong Kong Special Administrative Region (SAR) of the People's Republic of China suffer many violations of their human rights.

2. As the economy of Hong Kong boomed in the mid-1970s, near full employment was achieved, resulting in a perceived labour shortage. In response, the government mobilized local women eager to enter the labour market to increase household income. However no facilities were provided to relieve families from housekeeping and child-rearing tasks. In addition, working women had to cope with the patriarchal resistance of men to share responsibility for domestic chores. Other women were increasingly employed to perform these tasks. Accordingly, the Government of Hong Kong liberalized the importation of FDWs in the early 1980s. By 1990 there were at least 70,335 FDWs (90% Filipinos, 6% Thais, 4% all others). In May 2000, FDWs in Hong Kong SAR totaled 202,900 (73% Filipinos, 23% Indonesians, 3% Thai, 1% all others). As of December 2001, an estimated 230,000 FDWs are working in Hong Kong. Most are women.

3. All legal FDWs in Hong Kong SAR are protected by a standard employment contract spelling out minimum working conditions and employers' responsibilities. FDWs also have a legal minimum wage set by the government, which is unique in the territory. This is a form of protection in recognition of the specific vulnerability of FDWs. They are also covered by the Employment Ordinance, and thus enjoy the same legal rights as local workers, including the rights to unionize, demonstrate and undertake religious/cultural activities. The Ordinance defines not only the benefits/entitlements of workers; it likewise provides maternity leave and trade union protection. The territory strictly requires, and is able to reasonably enforce, standard employment contracts for migrant workers. Its developed legal system, service mechanisms and effective bureaucracy provide well-defined channels for redress of FDW grievances. There are also many non-government organisations and migrant-support groups providing services.

4. Despite the above, FDWs in Hong Kong SAR experience numerous contract violations and criminal abuses. The Asian Migrant Centre (AMC) estimates that the more than 20 migrant counseling centres in Hong Kong SAR handle at least 1,500 cases a year. The Labour Relations Division of the Labour Department handled 1,447 claims from FDWs in the first eight months of 2000. Violations generally relate to unfair termination, problems of underpayment, inhuman treatment, exorbitant agency fees, and physical and sexual abuse, including rape.

5. In February 2001 the Coalition for Migrants' Rights (CMR) and AMC published a report indicating that:

   - At least a quarter of all FDWs in Hong Kong SAR suffer violations of contract, and the worst violations are against Indonesian and women workers:

      i. At least 15% of all FDWs are underpaid. As many as 48% of Indonesians are underpaid. Indonesians also receive the lowest average pay (HK $3,073). More women (15%) are underpaid than men (8%) and women are also paid a lower average wage (HK$3,619) than men (HK$4,758).

      ii. At least 22% of all FDWs are not given the mandated one rest day per week. More than 2% are held in virtual bondage with almost no day off at all. More than 61% of Indonesians don't get the mandated rest days and more women (22%) are affected than men (9%).

iii. At least 26% of all FDWs are not given the 12 statutory holidays per year. More than 18% have only one or no holiday at all in a year. Almost 64% of Indonesians do not get any holiday and more women (26%) are affected than men (8%).

- 26% of FDWs suffer from verbal and physical abuse. Indonesians are the most widely abused (33%), although the problem is also high among Thais (26%) and Filipinos (22%). More women (26%) are verbally and physically abused than men (20%).

- As many as 4.5% of FDWs are subjected to sexual abuse, including rape, all of them being women. There are very particular patterns depending on FDW's nationality.

6. A related survey conducted by AMC, Kotkiho (an alliance of Indonesian migrants' groups) and Amal Indonesia Direct found that Indonesian FDWs are specifically targeted by employment/recruitment agencies' practice of overcharging fees. The survey found that 89% of Indonesian FDWs were charged above the Indonesian government-set maximum charge of HK$367, and the mean average charged by agencies was HK$5,655.

7. FDWs responding to the above research stated that the following government policies and practices are particularly discriminatory:

   - The "2-week rule", which stipulates that a FDW who is terminated has only 2 weeks, or until the expiration of visa (whichever is earlier), to legally stay in Hong Kong SAR. Similar restrictions are not imposed on foreigners working in professional fields.

   - "New conditions of stay" adopted by the government in 1987, which include restrictions on shifting employers without approval from the Immigration Department, and an outright prohibition on FDWs shifting to other (non-domestic work) job categories. FDWs are also unable to obtain rights of residency even if they have continuously worked in Hong Kong SAR for over seven years. Again, these restrictions apply only to FDWs and not other foreign workers.

   - Not being allowed to work while a case is pending before the labour department, courts or other authority. Cases normally stretch for months or sometimes years.

   - Not being allowed to do part-time jobs, although other people can.

   - Not being allowed to stay with family in Hong Kong SAR.

   - No voting rights or other representation in the policy-making processes.

8. Proposals to cut back on protection for FDWs have placed them further at risk. A 1999 suggestion to remove maternity rights from FDWs would lead to employment being terminated automatically upon becoming pregnant. Other discriminatory proposals have included a service tax on FDWs for their use of public facilities, a levy on employers of FDWs, and a quota system to restrict their number. In November 2001 the Education and Manpower Bureau proposed a second reduction of the minimum wage for FDWs (following a 5% cut in 1999) and to stop the option of live-out arrangements. The wage cut proposal particularly has caused great anxiety among domestic workers, who see this as symptomatic of government measures targeting the weakest and lowest status workers in times of economic crisis.

9. FDWs are also typically discriminated against in shops and other commercial

establishments and on public transport, in government offices—especially the Immigration Department and police—as well as by the public in general. Hence, violations of migrant workers' rights are not rare or isolated incidents but are systemic and structural. The situation of migrant domestic workers is a classic example of the inter-sectionality of class, racial and gender discrimination.

10. In keeping with the CMR/AMC report, the Asian Legal Resource Centre urges the Government of Hong Kong SAR to:

- Promptly address all violations of FDWs rights, including via

  i. The establishment of sympathetic, confidential and effective reporting channels, whereby migrants will be encouraged to report abuses without fear of retaliation;

  ii. The assurance of proper and quick investigation and prosecution processes to avoid additional problems arising from drawn out or delayed procedures;

  iii. Adequate professional assistance for the victims of abuse, including multilingual counselling and legal aid, 24-hours hotline services, safe and adequate shelters and social assistance; and,

  iv. Regional and bilateral cooperation to eliminate the exploitative practices of agencies, as well as (corrupt) collaborative practices of embassy officials.

- Undertake awareness-raising activities to inform and educate FDWs, government agencies, the general public and especially employers about the rights of migrant workers and their value to Hong Kong SAR society.

- Acknowledge the problem of discrimination against migrant workers and adopt measures to address it, including a review of existing discriminatory government policies and proposals, and the enactment of anti- discrimination legislation in keeping with international principles.

- Provide greater support to non-government organisations and social groups assisting migrant workers and encourage local service organisations to extend their services to migrants.

- Encourage the formation of trade unions and other consultative groups to strengthen the bargaining power of migrant workers.

- Employ the 1990 UN Convention for the Protection of Migrant Workers and Members of Their Families as the international standard to guide the review and formulation of all FDW policies, with the full participation of FDW representatives and their organisations.

- Review and upgrade the present already minimal wage and contractual conditions regularly.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/85
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 14 (c) of the provisional agenda

SPECIFIC GROUPS AND INDIVIDUALS: MASS EXODUSES AND DISPLACED PERSONS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 5 2 9 *

ENG

Lack of effective protection for IDPs in Asia

1. There are millions of people in Asia carrying the tag "IDP", or Internally Displaced Person, including large populations in China, Myanmar, Sri Lanka, Afghanistan and Indonesia. All of these people suffer insecurity and denials of their human dignity.

2. IDPs flee for reasons of persecution on the basis of race, religion, nationality, membership in a particular political or social group or severe economic hardships, especially emanating from drought or recurrent crop failure. Some are would-be refugees who have been prevented entry to another country even at the expense of their lives. Neighbouring territories often disseminate anti-refugee propaganda to justify an inhumane response. Such attitudes and propaganda also induce attacks on standing populations of refugees in those countries, further increasing general insecurity.

3. The hardening of national borders and related policies in Asia means that the number of IDPs now exceeds that of refugees. Regrettably, most IDPs are faceless. Unlike refugees, there are no specific national or international instruments offering them protection. They are left to the whims and fancies of whichever authority is in power in a given domain. Information about them is either withheld from the public or manipulated for political expediency. International organisations find it difficult both to gain access to IDP populations and to negotiate with governments on their behalf due to the lack of recognized legal guidelines. In the absence of international and domestic laws, governments are at liberty to refuse IDPs the security they deserve. There are also no mechanisms to monitor the treatment they receive.

4. One major factor preventing the adoption of effective remedies both nationally and internationally is the absence of accurate data about IDPs. This is due to the inaction of governments and the debarring of international orgnisations from verification. Inaccuracy regarding the numbers of persons, their actual needs and locations results in denial of their basic needs. In this case the major obstacle is the principle of national sovereignty, which when selectively applied may serve to obstruct the delivery of basic human rights.

5. It is this concern that must guide the international community to bring IDPs under international guidelines pertaining to refugees. The distinction between refugees and IDPs is entirely artificial: all deserve equal recognition and the extension of full protection under international law. IDPs can no longer be treated as the concern of individual governments, which are invariably responsible for the creation of situations, directly or indirectly, from which people are displaced. Hence there is clearly a need either to amend the present Convention on Refugees to include reference to IDPs, or an additional protocol or convention be drawn up to pertain to IDPs. Such an instrument is essential, as the current Guiding Principles on Internal Displacement are not binding.

6. Finally, given that a large number of displacements occur due to man-made disasters, failed agricultural policies, misguided rehabilitation programs or the implementation of unsuitable plans by governments induced and funded by the World Bank or International Monetary Fund, it is imperative that these agencies also be held responsible and be obliged to follow new internationally accepted human rights standards and norms.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2002/NGO/86
31 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 17 (b) of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201053 1*

ENG

1. The Asian Legal Resource Centre welcomes the recent prosecution of 10 persons responsible for crimes against humanity in East Timor between January and October 1999. Although the convictions do not reach those top-level decision makers responsible for the widespread human rights violations there in the lead-up to the independence ballot, the sentences handed down may go some way to ending the culture of impunity that existed in the Republic of Indonesia under the Soeharto regime. Notwithstanding, the Indonesian legal system continues to fail human rights defenders there more than three years after the fall of Soeharto.

2. It is clear that there has not been any real reform of the criminal justice system in Indonesia since the days of dictatorship, which began with the 1965-66 massacre of between 500,000 and 2 million alleged communists. To date not one perpetrator has been arrested and charged for that atrocity. Human rights defenders were among those murdered, tortured, detained and otherwise abused both during that period and subsequently. Pramoedya Ananta Toer, a prominent author, was sentenced to 11 years without trial or formal charge; Ibu Sulami, a women's movement leader, spent 20 years in prison-just to name two of thousands. A system that denies justice to past human rights defenders is unlikely to protect the rights of current ones.

3. Among human rights defenders targeted at present are those documenting violations of human righs in Aceh and West Papua, where struggles for self-determination are currently unfolding. These people are subject to threats, disappearances and extrajudicial killings at the hands of the military, police, paramilitary, security guards and armed independence groups. In Aceh, where only one judge remains, as of 7 December 2001, Koalisi NGO HAM Aceh had verified 103 disappearances during 2001. In West Papua, the recent assassination of independence leader Theys Eluay with the suspected involvement of Kopassus (Army Special Force Command) affirms that the tactic of 'silencing through terror' spans the length of the archipelago. The Indonesian National Human Rights Commission (Komnas HAM) has conducted preliminary research into the murder and recommended that the government establish an independent commission of inquiry into the death of Mr. Eluay. Unless this inquiry can be conducted in a matter that will satisfy the local and international human rights communities, the last strands of goodwill remaining among the Papuan population towards Jakarta will surely be lost.

4. Central Sulawesi (2,000 civilians killed since 1999) and Maluku and North Maluku (5,000 to 12,000 civilians killed since 1999) are also now entrenched in communal violence and religious segregation. It is clear that the military has engineered and extended these conflicts for its own political and financial ends with complete impunity. Armed civilian groups such as Laskar Jihad and Christian militias have a political and economic interest in maintaining the suspicion, animosity and violence, and have suppressed human rights defenders from their own communities trying to rebuild inter-faith relations. Despite ceremonies and discussions on 'conflict resolution' and 'reconciliation', the government has failed to intervene to disarm and disband those perpetuating the conflict. Even the most basic demand of the people-that armed militia groups be prevented from travelling en masse to different islands on militant religious missions-has not been met, as thousands of Laskar Jihad members reportedly travelled to Poso in December 2001 to reawaken the bloody conflict in Central Sulawesi.

5. Although it is urgent that the international community address conditions in these 'exceptional' areas, it is also vital to understand that there is nowhere in Indonesia that human rights defenders can carry out their work without repercussions. An example of how the entire military-police-judicial system remains Soeharto's legacy comes in the

treatment of 19 persons in Bandung motivated to demand reasonable prices for cooking oil. On 14 June 2001, students, workers and activists held a rally to protest government plans to increase the price of oil, an essential commodity. The police, apparently angry that they did not make any arrests for a separate protest the previous day, violently attacked the protestors. Helped by 'preman' (civilian representatives of the military), the police kicked, punched, and beat the defenders with long bamboo poles. One defender was knocked unconscious with a teargas gun; another was sliced in the back with a removable bayonet; a third was beaten unconscious and dragged along the ground; a fourth hit on the head with a bamboo pole so that her headscarf was soaked in blood. The defenders were then taken to a 'holding area', where they were beaten further and verbally abused incessantly. They were herded into police vehicles, and beaten again. They were taken to the Bandung police station, where they were beaten and interrogated and forced under threat of torture to sign statements, many of which were not read by the defenders. They were kept incommunicado for the first five to seven days of detention, while the majority of their torture wounds were healing, during which time they were subject to further physical and mental abuse. Under international pressure they were finally released on bail after two months. Since the trial began the court has ignored complaints of torture and instead accepted the statements signed by the defenders under police intimidation as evidence. The judges have enabled the prosecution to enjoy endless delays in proceedings, and have cross-examined the defence witnesses far more harshly than the prosecutors themselves. There is no pretence of neutrality by the judges-they clearly believe the defenders are guilty of some serious crime, but lack any concrete evidence to convict them.

6. The environment for the promotion of human rights in Indonesia has worsened in 2001 with the re-emergence of 'anticommunist' organisations. These groups have attacked any person, organisation, office, movement, worker or object considered to have 'left-wing ideology'. Attacks have included book-burning, physical intimidation, kidnapping, public threats on television and other mass media, and burning and destruction of offices. Many of the organisations that operated covertly under the Soeharto regime and had at least been able to conduct their human rights work openly during the past few years have had to go underground again. This deterioration in conditions is unsurprising, as the military-police-judicial system remains almost identical to the pre-1997 model, and Soeharto's allies retain power and influence.

7. Although the Asian Legal Resource Centre is pleased that the Government of Indonesia has introduced new legislation to separate police and military functions, congratulations must be reserved until the police and military are seen to be fulfilling their purported functions of protecting and promoting the welfare of the Indonesian people, rather than continuing to violently suppress those calling for human rights. Furthermore, despite the courageous role of the Secretary General of Komnas HAM, the commission remains paralysed by the ongoing presence of numerous former members of Soeharto's military. What the commission has been able to achieve to date looks set to be lost as the organisation is now being brought under direct control of the government. Its staff will be made public servants and the parliament appoint future commissioners, at a minimum age of 40 years, which will rule out the majority of the current commission.

8. The Asian Legal Resource Centre urges the international human rights community not to be misled into believing that Indonesia has entered a period of democracy and human rights promotion. Until the military-police-judicial system and the criminal prosecutions system are reformed, the role of these institutions remains as it was during the Soeharto dictatorship: to protect the perpetrators of state crimes and suppress the voices and activities of human rights defenders. The international

community must instead press for fundamental criminal justice reform in Indonesia to enable the future protection of the many courageous defenders of human rights there.